X-XI-XII

FEDERAL GOVERNMENT

IN

CANADA

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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor.

History is past Politics and Politics present History — *Freeman.*

SEVENTH SERIES

X-XI-XII

FEDERAL GOVERNMENT
IN
CANADA

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BALTIMORE
N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY
October, November, December, 1889

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JOHN MURPHY & CO., PRINTERS.
BALTIMORE.

TABLE OF CONTENTS.

		Page.
Lecture I.	Historical Outline of Political Development...	7
II.	General Features of the Federal System.....	29
III.	The Government and the Parliament.....	77
IV.	The Provincial Governments and Legislatures..	121

Corrigenda.

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FEDERAL GOVERNMENT IN CANADA.

LECTURE I.

HISTORICAL OUTLINE OF POLITICAL DEVELOPMENT.

In the course of this and the following lectures,[1] I propose to direct your attention to the Federal constitution of the Dominion of Canada. My review of the system of government which we now possess must necessarily be limited in its scope. I can but give you an outline of its leading features and a very imperfect insight into its practical operation. I do not pretend to do more than lay before you a mere sketch—perhaps not more than a tracing of the architect's work—and point out the strength and harmony of the proportions of the national structure which Canadian statesmen are striving to perfect on the northern half of the continent. At the same time I shall endeavor to indicate what seem, in the opinions of competent authorities, to be such defects and weaknesses as must always, sooner or later, show themselves in the work of human hands.

It is necessary that I should at the outset briefly trace the various steps in the political development of British North America, so that you may the more clearly understand the

[1] These four lectures were read during the month of May, 1889, before Trinity University, Toronto, Canada, and are now printed for the first time with some notes and additions to the text.

origin and nature of our present system of government. Nor can I well leave out of the consideration some references to the political institutions that existed in Canada previous to 1759–60. Such a review will not give any evidence of political progress, but it would be very incomplete if it did not lay before you the characteristics of a system of government which is not simply interesting from an antiquarian or historical point of view, but also on account of the comparisons it leads us to make between the absolutism it represented and the political freedom which has been the issue of the fall of Quebec in 1759, and of the supremacy of England in Canada.

But there is another important consideration which renders it absolutely necessary that I should give more than a passing allusion to the French period of Canadian history. Though more than a century and a quarter has passed since those days of the French régime, many of the institutions which were inherited from old France have become permanently established in the country, and we see constantly in the various political systems formed in Canada from time to time the impress of those institutions and the influence of the people of French Canada.

As the most convenient method of dealing with this part of my subject, I shall leave the consideration of the political development of Nova Scotia and the other small provinces until the last lecture, when I come to review the present constitution of their governments and legislatures. I shall confine myself for the present to the political history of the large country generally known as Canada until 1867, and now divided into the provinces of Ontario and Quebec. This history may be properly divided into several Periods, varying in the number of years from the time Champlain laid the foundation of the French colony on the banks of the St. Lawrence, down to the establishment of the system of federation.

First of all we have the period when France claimed dominion over the extensive ill-defined territories watered by the St. Lawrence and the great Lakes and including the valleys

of the Ohio and the Mississippi Rivers. During this period which lasted from 1608 to 1759–60,—for it is not necessary to refer to the abortive expedition of the Marquis de la Roche or to the voyages of Jacques Cartier which did not lead to immediate colonization,—Canada was under the control for a number of years of proprietary governments chartered by the king to carry on trade in the country whose furs were already highly valued in the markets of Europe. In those days of chartered corporations the governor was radically supreme and exercised executive, legislative and judicial powers with the assistance of a council which he consulted according to his pleasure. By 1663, however, Louis XIV. decided under the advice of the eminent statesman Colbert to take the government of Canada into his own hands, but the measures he proposed were for a while kept in abeyance on account of a charter for commercial purposes being granted to a new company under the influence of courtiers anxious to use the colony for their own selfish purposes. But Colbert was ambitious to extend the commerce of France and establish colonies wherever she had a foothold, and in this respect he was wise above statesmen of his day. Accordingly we find that on the failure of the new company to realize its expectations no fresh effort was made in the same direction, but the plans of 1663 were carried out in 1674 and the king and his minister took all the measures necessary to establish beyond legal doubt a regular system of government in accordance with the autocratic spirit which characterized regal power in those days. It has been well observed by the historian Parkman that the governor of Canada as well as the intendant, the next most important if not indeed in many ways the most important functionary of state, were to all intents and purposes in point of authority, the same officials who presided over the affairs of a province of France. In Canada as in France governors-general had only such powers as were expressly given them by the king who, jealous of all authority in others, kept them rigidly in check. In those days the king was supreme; "I am the state"

said Louis Quatorze in the arrogance of his power. The feudal system of France had been long since deprived of its dangers to the monarch and the nobles of the once proud feudal families, who in old times had even defied their feudal chief, were now kept within the courtly precincts to pay him homage and obey his commands. The three estates, the nobles, clergy and *tiers état*, or the "nation," still existed in name, but while the first was stripped of real power and the second exercised its usual influence on the conscience of the devout the people groaned under the exactions of the king and his courtiers. The states-general never assembled to give voice to the complaints of the nation and provide redress. We find there were Parliaments that assembled at stated periods at Paris, Rouen and other important places but in no respect did they resemble that great council of the English people which from the earlier days of English history has been so often a check on kingly assumptions. The Parliaments of France were purely of a judicial character, and though at times they served as a curb on the absolutism of the king, as a rule they were under his control, and forced under all circumstances to register his decrees, however objectionable they might be. In view of such facts it is easy to understand that there could be no such things as free government or representative institutions in Canada, like those enjoyed from the very commencement of their history by the old English colonies which were founded almost contemporaneously with the settlement of Acadia and Canada by De Poutrincourt and Champlain.

The governor had command of the militia and troops, and was nominally superior in authority to the intendant, but in the course of time the latter became virtually the most influential officer in the colony, and even presided at the council board. This official, who had the right to report directly to the king on colonial affairs, had large civil, commercial and maritime jurisdiction, and could issue ordinances on his own responsibility which had full legal effect in the country. Associated with the governor, and intendant was a council, com-

prising in the first instance five, and, eventually, twelve persons chosen from the leading people of the country. The change of name from the "Supreme Council" to the "Superior Council" is of itself some evidence of the determination of the king to restrain the pretensions of all official bodies throughout the kingdom and its dependencies. This body exercised legislative and judicial powers, and was a court of appeal from the judicial functionaries at Quebec, Montreal and Three Rivers, the principal towns of the three districts into which the country was divided for the administration of justice in accordance with the *Coutume de Paris*. The Bishop was a member of the council, and the history of the colony is full of the quarrels that arose between him and the governor on points of official etiquette, or with respect to more important matters affecting the government of the country. The Roman Catholic Church, from the very first settlement of Canada, was fostered by express provisions in the charters of the incorporated commercial companies. The causes that assisted in the colonization of the French colony were trade and religion, and the priestly missionary was as frequent a visitor in the camp of the Indian tribes as the *Coureur de bois*, who wandered over the Western wilderness in the days of the French régime. When the king assumed the government, the bishop and his clergy continued to increase their power and wealth, and by the time of the conquest the largest landed proprietors, and in many respects the wealthiest, were the church and its communities. The seigniory soon gave way to the parish of the church, as a district for local as well as for ecclesiastical purposes. Tithes were imposed and regulated by the government, and as the country became more populous the church grew in strength and riches. It held always under its control the education of the people, and was then, as now, the dominant power in the country.

The king and the council of state in France kept a strict supervision over the government of the colony. An appeal lay to the king in all civil and criminal matters, but the dis-

tance between Paris and Quebec, in those days of slow communication, tended to keep up many abuses under which the people suffered, and it is easy to explain how it was that an unscrupulous intendant like Bigot was able to cheat the Canadians for so many years with impunity and amass large wealth by the most disgraceful peculation and jobbery.

We look in vain for evidence of popular freedom or material prosperity during these times. The government was autocratic and illiberal, and practically for many years in the hands of the intendant. Public meetings were steadily repressed and even the few that were held in those early days on occasions of public emergency could be called only at the instance of the authorities. No system of municipal government was established, and the efforts to elect aldermen for civic purposes in Quebec were almost immediately rendered ineffectual by the open or insidious hostility of the governing powers. Some semblance of popular representation was given for a while by the election of "syndics," a class of officials peculiar to French local administration, though we can trace their origin to the Greeks. The French Canadian colonists had in all probability brought with them among their customary rights that of choosing an agent for the special purpose of defending the interests of a community whenever necessary before the authorities, but in accordance with the principles that lay at the basis of the Canadian government, the people soon found themselves incapable of exercising what might have been a useful municipal office, and might have led to the extension of popular privileges. It is not strange, then, that the *habitants* of the seigniories, as well as the residents in the towns, lived for the most part a sluggish existence without any knowledge of, or interest in the affairs of the colony, which were managed for them without their consent or control, even in cases of the most insignificant matters. Even trade was in fetters. Canadians could only deal with France, in conformity with the restrictive policy of those times when colonies were considered simply feeders for the commerce of the parent state.

It may be urged with truth that the French Canadian had no knowledge of those free institutions which Englishmen brought to this continent as their natural birthright. The people of France were crushed beneath the heels of the king and nobles, and the Norman or Breton was hardly a freeman like an Englishman of Devon or Kent. But transplanted to the free atmosphere of this continent, and given some opportunities for asserting his manhood, the bold courageous native of Brittany or Normandy might have sooner or later awaked from his political lethargy, and the conquest might have found him possessor of some political rights and in many respects an energetic member of the community. This was, however, impossible in a country where the directions of the king and his pliant ministers were always to the effect that liberty of speech should be rigidly repressed. Even the Marquis of Frontenac, when governor, was told in very emphatic terms that he made a grievous mistake when he presumed to advise the assembling of the Canadians on the plan of the *états généraux* of France; a piece of presumption, indeed, when the representative assemblies were never called together even in the parent state.

We must now come to the Second Period in our political history, which dates from that hour of humiliation for France and her Canadian offspring, the capitulation of Quebec and of Montreal in 1759–1760. This was the commencement of that new era during which the French Canadians were gradually to win for themselves the fullest political freedom under the auspices of England. The second period may be considered for the purposes of historical convenience, to be the transition stage from the conquest until the granting of representative institutions in 1791. I call it a transition stage because it illustrates the development from the state of complete political ignorance that existed at the time of the conquest to the state of larger political freedom that the constitutional act of 1791 gave to the people of Canada. During this transition period it is interesting to notice the signs that the

French Canadian leaders gave from time to time of their comprehension of self government, even within a quarter of a century from the day they emerged from the political darkness of their own country under the French régime. Several political facts require brief mention in this connection. From 1760 to 1763 when Canada was finally ceded to Great Britain by the Treaty of Paris there was a military government as a necessary consequence of the unsettled condition of things, but it does not demand any special consideration in this review. Then King George III issued his famous proclamation of 1763,[1] and by virtue of the royal prerogative established a system of government for Canada. The people were to have the right to elect representatives to an assembly, but the time was not yet ripe for so large a measure of political liberty, if indeed it had been possible for them to do so under the instructions to the governor-general, which required all persons holding office or elected to an assembly to take oaths against transubstantiation and the supremacy of the Pope. This proclamation which was very clumsily framed in the opinion of lawyers created a great deal of dissatisfaction, not only for the reason just given but on account of its loose reference to the system of laws that should prevail in the conquered country. As a matter of fact the ordinances issued by the governor and executive council that now governed Canada, practically went to establish both the common and the criminal law of England to the decided inconvenience and dissatisfaction of the French Canadians accustomed to the civil law of France. But events were shaping themselves in favor of the French Canadians or "new subjects" as they were called in those days. The difficulty that had arisen between England and the old thirteen colonies led her statesmen to pay more attention to the state of Canada and to study the best methods of strengthening their government in the French colony, where

[1] Issued 7th October, 1763. See text at the end of third volume of Cartwright's Cases on the British North America Act.

the English element was still relatively insignificant though holding practically the reins of power by means of the executive council and the public offices. In 1774 the parliament of Great Britian was for the first time called upon to intervene in the affairs of Canada and passed the act giving the first constitution to Canada, generally known in our history as the Quebec act.[1] During the same session were passed a series of acts with the object of bringing the colonists of New England into a more humble and loyal state of mind; for the cargoes of tea, inopportunely despatched to different colonial ports, had been already destroyed, and the discontent that prevailed generally in the colonies, especially in Massachusetts, had reached a crisis. The Quebec act was in the direction of conciliating the French Canadians, who naturally received it with much satisfaction. The English, on the other hand, regarded it with great disfavor, and the same may be said of the people of the old thirteen colonies, who subsequently, through their Congress, stated their objections in an appeal to the people of Great Britain, and declared it to be "unjust, unconstitutional, and most dangerous and destructive of American rights." The act established a legislative council nominated by the crown, and the project of an assembly was indefinitely postponed. The French Canadians were not yet prepared for representative institutions of whose working they had no practical knowledge, and were quite content for the time being with a system which brought some of their leading men into the new legislative body. All their experience and traditions were in favor of a governing body nominated by the king, and it required time to show them the advantage of the English system of popular assemblies. But what made the act so popular in Lower Canada was the fact that it removed the disabilities under which the French Canadians, as Roman Catholics, were heretofore placed, guaranteed them full freedom of worship, and placed the church, with the

[1] Imp. Act, 14th Geo. III, cap. 83.

exception of the religious orders, the Jesuits and Sulpitians,[1] in complete possession of their valuable property. The old French law was restored in all matters of controversy relating to property and civil rights. The criminal law of England, which was, in the opinion of the French Canadians, after an experience of some years, preferable to their own system on account of its greater mildness and humanity, was to prevail throughout the country. The hostile sentiment that existed in Canada, and the old thirteen colonies arose in a great measure from the fact that the civil law of France was applied to the English residents not only in the French section, but to the large area of country extending to the Mississippi on the west, and the Ohio on the south, so as to include the territory now embraced by the five States northwest of the Ohio.

While this act continued in force various causes were at work in the direction of the extension of popular government. The most important historical fact of the period was the coming into British North America of some forty thousand persons, known as United Empire Loyalists, who decided not to remain in the old thirteen colonies when these foreswore their allegiance to the king of England. Few facts of modern times have had a greater influence on the destinies of a country than this immigration of sturdy, resolute and intelligent men, united by high principles and the most unselfish motives. They laid the foundations of the provinces now known as New Brunswick and Ontario, and settled a considerable portion of Nova Scotia. From the day of their settlement on the banks of the St. John, Niagara and St. Lawrence rivers, and in the vicinity of Lakes Ontario and Erie, they have exercised by themselves and their descendants a powerful influence on the institutions

[1] The Sulpitians, who are a very wealthy corporate body, were left in possession of their property, but it was not until 1839 that they received legal recognition. The Crown took formal possession of the property of the Jesuits in 1800 on the death of the last representative of the order in Canada. See Lecture II, and Lareau, Histoire du Droit Canadien, II, pp. 195–200.

of Canada, not unlike that exercised by the descendants of the New England pioneers throughout the American Union; and it is to them we owe much of that spirit and devotion to England which has always distinguished the Canadian people and aided to keep them, even in critical periods of their history, within the empire.

In view of the rapidly increasing English population of Canada and of the difficulties that were constantly arising between the two races,—difficulties increased by the fact that the two systems of law were constantly clashing and the whole system of justice was consequently very unsatisfactorily administered,—the British government considered it the wisest policy to interfere again and form two separate provinces, in which the two races could work out their own future, as far as practicable, apart from each other. This was a very important change in its far-reaching consequences. It was not merely another remarkable step in the political development of Canada, but it was to have the effect not only of educating the French Canadians more thoroughly in the advantages of self-government but of continuing the work which the Quebec Act practically commenced, and strengthening them as a distinct nationality desirous of perpetuating their religion and institutions.

The passage of the Constitutional Act of 1791[1] is the beginning of the Third Period in the political history of Canada, which lasted for half a century until it was found necessary to make another important change in the constitution of the provinces. This Act extended the political liberties of the people in the two provinces of Upper Canada and Lower Canada—now Ontario and Quebec—organized under the Act, since it gave them a complete legislature, composed of a governor, a legislative council nominated by the crown, and an assembly elected by the people on a limited franchise, principally the old forty shilling freehold system so long in vogue

[1] Imp. Act, 31 Geo. II, Cap. 31.

in English speaking colonies. The object was, as stated at the time, to separate the two races as much as possible and to give both a constitution resembling that of England as far as the circumstances of the country would permit.

The history of the two provinces, especially of French Canada, under the operation of the Constitutional Act of 1791, is full of instruction for the statesman and political student. It illustrates the fact which all history teaches, that the political development of a people must be always forward the moment their liberties are extended, and that the refusal of franchises and privileges necessary to the harmonious operation of a government is sure sooner or later to breed public discontent. I do not purpose to dwell on well-known historical facts, but there are a few considerations bearing on this review of political development which I shall briefly mention. In the first place the constitution of 1791, though giving many concessions and privileges to the provinces, had an inherent weakness, since it professed to be an imitation of the British system, but failed in that very essential principle which the experience of England has proved is absolutely necessary to harmonize the several branches of government; that is the responsibility of the executive to parliament, or more strictly speaking to the assembly elected by the people. The English representatives in the province of Upper Canada soon recognized the value of this all important principle of parliamentary government according as they had experience of the practical operation of the system actually in vogue; but it is an admitted fact that the French Canadian leaders in the assembly never appreciated, if indeed they ever understood, the constitutional system of England in its full significance. Their grievances, as fully enumerated in the famous resolutions of 1834, were numerous, but their principal remedy was always an elective legislative council, for reasons quite intelligible to the student of those times. The conflict that existed during the last thirty years of this period was really a conflict between the two races in Lower Canada, where the French and elective

element predominated in the Assembly, and the English and official or ruling element in the legislative council. The executive government and legislative council, both nominated by the crown, were virtually the same body in those days. The ruling spirits in the one were the ruling spirits in the other. The English speaking people were those rulers, who obstinately contested all the questions raised from time to time by the popular or French party in the assembly. In this contest of race, religion and politics the passions of men became bitterly inflamed and an impartial historian must deprecate the mistakes and faults that were committed on both sides. But looking at the record from a purely constitutional point, it must be admitted that there was great force in the arguments presented by the assembly against many anomalies and abuses that existed under the system of government. They were right in contending for having the initiation and control of the public expenditures in accordance with the principles of parliamentary government. The granting of supply is essentially the privilege of a people's house, though no measure can become law without the consent of the upper house, which may reject, but cannot amend a revenue or money bill. Another grievance was the sitting of judges in both houses. While the British government soon yielded to the remonstrances of the assembly, and instructed the governor to consent to the passage of an act to prevent the continuance of this public wrong—for it cannot be considered otherwise—of judges having a seat in the assembly, they were permitted to remain both in the executive and legislative councils for nearly the duration of the constitutional act. It was not until the assembly endeavored to impeach the judges year after year, and deluged the imperial parliament with addresses on the subject, that this grievous defect disappeared from the political system.

In Upper Canada the political difficulties never assumed so formidable an aspect as in the French Canadian section. No difference of race could arise in the Western province, and

the question of supplies gradually arranged itself more satisfactorily than in Lower Canada, but in course of time there arose a contest between officialism and liberalism. An official class held within its control practically the government of the province. This class became known in the parlance of those days as the "family compact," not quite an accurate designation, since the ruling class had hardly any family connection, but there was just enough ground for the term to tickle the taste of the people for an epigrammatic phrase. The clergy reserves question grew out of the grant to the Protestant Church in Canada of large tracts of land by the constitutional act, and was long a burning dominant question in the contest of parties. The reformers, as the popular party called themselves, found in this question abundant material for exciting the jealousies of all the Protestant sects who wished to see the Church of England and Church of Scotland deprived of the advantages which they alone derived from this valuable source of revenue.

The history of this period, however full of political mistakes, is interesting since it shows how the people, including the French Canadians, were learning the principles on which parliamentary government must rest. It was history repeating itself, the contest of a popular assembly against prerogative, represented in this case by the governor and executive which owed no responsibility to the people's house. Those times of political conflict have happily passed and the dominant body now is the people's house, where the council only holds power by the will of the majority. If there is cause for complaint, or danger in the present system, it is in the too great power assumed by the executive or ministry and the tendency to yield too much to its assumptions on the part of the political majority.

I have endeavored, as briefly as possible, to show the principal causes of irritation that existed in Canada during the third period of our history. All these causes were intensified by the demagoguism that is sure to prevail more or less in

times of popular agitation, but the great peril all the while in Lower Canada arose from the hostility of the two races in the political arena as well as in all their social and public relations. The British government labored to meet the wishes of the discontented people in a fair and conciliatory spirit but they were too often ill advised or in a quandary from the conflict of opinion. No doubt the governors on whom they naturally depended for advice were at times too much influenced by their advisers, who were always fighting with the people's representatives and at last in the very nature of things made advocates of the unpopular party. Too generally they were military men, choleric, impatient of control, and better acquainted with the rules of the camp than the rules of constitutional government and sadly wanting in the tact and wisdom that should guide a ruler of a colony. Exception must be made of Lord Dorchester who, like Wellington and even Marlborough, was a statesman who would have been found invaluable had fate given him to Canada at a later period of her history when the political discontent was at last fanned into an ill-advised rebellion in the two provinces, a rebellion which was promptly suppressed by the prompt measures immediately taken by the authorities.

In Lower Canada the constitution was suspended and the government of the country from 1838–1841 was administered by the governor and a special council. The most important fact of this time was the mission of Lord Durham, a distinguished English statesman, to inquire into the state of the country as governor-general and high commissioner. Few state papers in English history have had greater influence on the practical development of the colonies than the elaborate report which was the result of his review of the situation. It was a remarkably fair summary of the causes of discontent and suggested remedies which recommend themselves to us in these days as replete with political wisdom. The final issue of the inquiries made into the condition of the country was the intervention of parliament once more in the affairs of

Canada and the passage of another Act providing for a very important constitutional change.

The proclamation of the Act of 1841[1] was the inauguration of the Fourth Period of our political development which lasted until 1867. The discontent that existed in Canada for so many years had the effect, not of diminishing but of enlarging the political privileges of the Canadian people. The Imperial government proved by this measure that they were desirous of meeting the wishes of the people for a larger grant of self-government. The French Canadians, however looked upon the Act with much disfavor and suspicion. The report of Lord Durham and the union itself indicated that there was a feeling in England that the separation of the two races in 1791 had been a political mistake, since it prevented anything like a national amalgamation; and it was now proposed to make an effort in the opposite direction and diminish the importance of the French Canadian section with its distinct language and institutions. The fact that the French language was no longer placed on the same footing as English, in official documents and parliamentary proceedings, together with the fact that Upper Canada had the same representation as Lower Canada in the assembly, despite the larger population of the latter section, was considered an insult and an injustice to the French Canadians, against which they did not fail to remonstrate for years.

But in my studies and personal experience of the times in which I live, I have been often struck by the fact that the logic of events is much more forcible than the logic of statesmen. So far from the act of 1841, which united the Canadas, acting unfavorably to the French Canadian people it gave them eventually a predominance in the councils of the country and prepared the way for the larger constitution of 1867 which has handed over to them the control of their own province, and afforded additional guarantees for the preservation of their lan-

[1] Imp. Act 3 and 4 Vic., Cap. 35.

guage and institutions. French soon became again the official language by an amendment of the union act, and the clause providing for equality of representation proved a security when the upper province increased more largely in population than the French Canadian section. The act was framed on the principle of giving full expansion to the capacity of the Canadians for local government, and was accompanied by instructions to the governor-general, Mr. Poulett Thomson, afterwards Lord Sydenham, which laid the foundation of responsible government. It took several years to give full effect to this leading principle of parliamentary government, chiefly on account of the obstinacy of Lord Metcalfe during his term of office; but the legislature and the executive asserted themselves determinately, and not long after the arrival in 1847 of Lord Elgin, one of the ablest governors-general Canada has ever had, the people enjoyed in its completeness that system of the responsibility of the cabinet to parliament without which our constitution would be unworkable. More than that, all the privileges for which the people had been contending during a quarter of a century and more, were conceded in accordance with the liberal policy now laid down in England for the administration of colonial affairs. The particular measure which the French Canadians had pressed for so many years on the British government, an elective legislative council, was conceded. When a few years had passed the Canadian Legislature was given full control of taxation, supply and expenditure in accordance with English constitutional principles. The clergy reserves difficulty was settled and the lands sold for public or municipal purposes, the interests of existing rectors and incumbents being guarded. The great land question of Canada, the seigniorial tenure of Lower Canada, was disposed of by buying off the claims of the seigniors. With the abolition of a system, which had its advantages in the early French times, since it forced both seignior and habitant to settle and clear their lands within a certain period, a relic of feudal days, foreign to the free spirit of American civilization,

disappeared from our civil system and the people of lower Canada were freed from exactions which had become not so much onerous as vexatious, and were placed on the free footing of settlers in all the English communities of America. Municipal institutions of a liberal nature especially in the province of Ontario, were established, and the people of the provinces enabled to have that control of their local affairs in the counties, townships, cities and parishes which is necessary to carry out public works indispensable to the comfort, health and convenience of the community, and to supplement the efforts made by the legislature, from time to time, to provide for the general education of the country; efforts especially successful in the province of Upper Canada where the universities, colleges and public schools are so many admirable illustrations of energy and public spirit. The civil service, which necessarily plays so important a part in the administration of government, was placed on a permanent basis and has ever since afforded a creditable contrast with the loose system so long prevalent in the United States, where the doctrine, "To the victors belong the spoils,"[1]—which was established in the time of President Jackson, though the phrase originated with a New York politician, W. L. Marcy—was found necessary and very convenient to satisfy the great body of office-seekers who naturally grew up in a country where elections are so frequent and professional politicians so numerous. In addition to those progressive measures, we may mention the acts securing the independence of parliament, the codification of the French civil law, the consolidation of the public statutes, the improvement of the election laws so as to ensure greater purity at elections, as among the legislation of a period replete with usefulness and admirably illustrating the practical character of Canadian public men.

The union of 1841 did its work and the political conditions of Canada again demanded another radical change commen-

[1] Sumner's Life of Andrew Jackson, in American Statesmen series, p. 162.

surate with the material and political development of the country, and capable of removing the difficulties that had arisen in the operation of the Act of 1841. The claims of Upper Canada to larger representation, equal to its increased population since 1840, owing to the great immigration which naturally sought a rich and fertile province, were steadily resisted by the French Canadians as an unwarrantable interference with the security guaranteed to them under the Act. This resistance gave rise to great irritation in Upper Canada where a powerful party made representation by population their platform, and government at last became practically impossible on account of the close political divisions for years in the assembly. The time had come for the accomplishment of a great change foreshadowed by Lord Durham, Chief Justice Sewell, Mr. Howe, Sir Alexander Galt, and other public men of Canada: the union of the provinces of British North America. The leaders of the different governments in Canada and the maritime provinces of Nova Scotia, New Brunswick, and Prince Edward Island, to whose political history I shall refer in a later lecture, after negotiations into which I need not enter here, combined with the leaders of the opposition with the object of carrying out this great measure. A convention of thirty-three representative men was held in the autumn of 1864 in the historic city of Quebec, and after a deliberation of several weeks the result was the unanimous adoption of a set of seventy-two resolutions embodying the terms and conditions on which the provinces through their delegates agreed to a federal union in many respects similar in its general features to that of the United States federation, and in accordance with the principles of the English constitution. These resolutions had to be laid before the various legislatures and adopted in the shape of addresses to the queen whose sanction was necessary to embody the wishes of the provinces in an imperial statute.

It is an important fact that the consent of the legislature was deemed sufficient by the governments of all the provinces

except one, though the question had never been an issue at the polls before the election of the legislative bodies which assumed the complete responsibility of this radical change in the constitutional position and relations of the countries affected. In New Brunswick the legislature was dissolved twice on the issue, and the opposition in the Nova Scotia assembly retarded the accomplishment of the measure, but finally both these provinces came into accord with the Canadian parliament, where only a relatively small minority urged objections to the proposed union. In the early part of 1867 the imperial parliament, without a division, passed the statute known as the "British North America Act, 1867," which united in the first instance the province of Canada, now divided into Ontario and Quebec, with Nova Scotia and New Brunswick and made provisions for the coming in of the other provinces of Prince Edward Island, Newfoundland, British Columbia, and the admission of Rupert's Land and the great North-west.

Between 1867 and 1873 the provinces just named, with the exception of Newfoundland, which has persistently remained out of the federation, became parts of the Dominion and the vast North-west Territory was at last acquired on terms eminently satisfactory to Canada and a new province of great promise formed out of that immense region, with a complete system of parliamentary government.

I have endeavored in the preceding pages to review within as brief a space as possible the salient features in the political development of Canada, and it is my intention in the lectures that follow to direct attention to the framework and operation of the constitutional system. I shall not treat the questions that arise from a mere technical or legal view, but from the standpoint of one who has many opportunities of observing its practical working. I shall refer to the various important changes that have occurred in the legislation of the country affecting the various branches of government, and try to point out what appear, according to the expe-

rience the country has gained within a quarter of a century, to be defects in the system requiring amendment sooner or later in order to give it more elasticity, efficiency and permanency.

So far as I have gone my readers will see even from this very imperfect summary of the political history of Canada for two hundred and sixty years since the foundation of Quebec, and one hundred and four years since the treaty of Paris, that there has been a steady development ever since England, the birth-place of free institutions, took the place of France, so long the home of an absolute, irresponsible autocracy. It took a century to bring about the changes that placed Canada in the semi-independent position she now occupies, but as we review the past we can see there was ever an undercurrent steadily moving in the direction of political freedom. Politicians might wrangle and commit the most grievous mistakes; governments in England and Canada might misunderstand public sentiment in the colony, and endeavor to stem the stream of political progress, but the movement was ever onward and the destiny that watches over peoples as well as over individuals was shaping our political ends, and, happily, for our good.

The results of these many years of political agitation through which Canada has passed have been eminently favorable to her interests as a political community. No country in the world enjoys a larger measure of political liberty or greater opportunities for happiness and prosperity under the liberal system of government which has been won by the sagacity and patience of her people.

Somewhere I have seen it said that the tree of liberty, like the oak or the maple, cannot spring suddenly into existence and attain full maturity in a day, but grows slowly and must bend at times beneath the storms of faction. But once it has taken deep root in a congenial soil, passion beats in vain against its trunk and the people find safety and shelter beneath its branches. The tree of liberty was long ago brought into

this country from the parent state, and has now developed into goodly proportions amid the genial influences that have so long surrounded it.

Of Canada we may now truly say that it is above all others "a land of settled government" resting on the vital principles of political freedom and religious toleration, and all those maxims which, experience has shown the world, are best calculated to make communities happy and prosperous.

LECTURE II.

GENERAL FEATURES OF THE FEDERAL SYSTEM.

The Dominion[1] of Canada now consists of seven provinces regularly organized and of an immense area of undeveloped and sparsely settled territory extending from Ontario to the base of the Rocky Mountains, and temporarily divided into four large districts, for the purposes of government. The area of the whole Dominion is only thirty thousand English square miles less than that of the United States,[2] including the vast

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[1] "The history of the circumstances under which the name of the 'Dominion' came to be given to the united provinces shows the desire of the Canadians to give to the confederation, at the very outset, a monarchical likeness in contradistinction to the republican character of the American federal union. We have it on the best authority that in 1866–67 the question arose during a conference between the Canadian delegates and the Imperial authorities what name should be given to the confederation of the provinces, and it was first proposed that it should be called 'The Kingdom of Canada;' but it is said that the Earl of Carnarvon, then secretary of state for the colonies, thought such a designation inadvisable, chiefly on the ground that it would be probably objectionable to the government of the United States, which had so recently expressed its disapprobation of the attempt of the Emperor Napoleon to establish an imperial European dynasty in Mexico. . . . . The Canadian delegates made due allowance for the delicacy of the sentiments of the minister and agreed, as a compromise, to the less ambitious title, Dominion of Canada,—a designation recalling that 'Old Dominion,' named by Raleigh in honor of the virgin Queen." See article by author in the *Scottish Review* for April, 1885.

[2] The United States has an area of 3,501,404 square miles, inclusive of Alaska (577,390); Canada, 3,470,392, or about the same area as Brazil; Europe, 3,800,000 square miles.

territory of Alaska. Its total population is about five millions of souls, of whom probably two millions and a quarter live in Ontario, nearly a million and a half in Quebec, and the remainder in the smaller provinces and in the territories. Out of the North-west has already been carved the province of Manitoba which has made remarkable progress, while a stream of population is now steadily flowing over the rich prairies and grazing lands of the territories. The Maritime Provinces are inhabited by an English people, with the exception of certain districts, especially in New Brunswick, where there is a small Acadian population still speaking the French language. Quebec has a French population of at least a million and a quarter of souls, professing the Roman Catholic religion and clinging with remarkable tenacity to their language and institutions, and commencing to swarm over certain portions of the Western Province. The population of Ontario is mainly English and Protestant; and the same may be said of the other provinces. In the territories and British Columbia there is a large Indian population, whose interests are carefully guarded by the government of Canada. The industrial pursuits of Nova Scotia and New Brunswick, both washed by the Atlantic ocean, are principally maritime, mining and commercial. Prince Edward Island is chiefly agricultural. The St. Lawrence is the natural artery of communication, by the aid of a magnificent system of canals, between the ocean and the provinces of Quebec and Ontario, and as far as the city of Port Arthur at the head of Lake Superior. Railways reach from Halifax to the growing city of Vancouver on the Pacific coast, and afford great facilities of commercial intercourse between the new territories and the markets of the old provinces and the rest of the world. The wealth of Ontario arises from her agricultural products, aided by a large system of manufactories. Quebec has varied interests, farming, manufacturing and commercial. The territories promise to be the principal granary of the continent, while British Columbia has large undeveloped wealth in her mountains and in the

seas that wash her coast. To unite and give a community of interest to all these territorial divisions of the Dominion—the Maritime Provinces, Quebec, Ontario, the North-west and British Columbia—and harmonize the ethnological and other differences that now exist within the limits of the confederation, is the very serious responsibility thrown upon the central and the local governments which derive their powers from the British North America Act of 1867. How far the system which this act provides is likely to promote these objects, I shall attempt to show in the course of this and succeeding lectures.

When the terms of the Union came to be arranged between the provinces in 1864, their conflicting interests had to be carefully considered and a system adopted which would always enable the Dominion to expand its limits and bring in new sections until it should embrace the northern half of the continent, which, as we have just shown, now constitutes the Dominion. It was soon found, after due deliberation, that the most feasible plan was a confederation resting on those principles which experience of the working of the federation of the United States showed was likely to give guarantees of elasticity and permanency. The maritime provinces had been in the enjoyment of an excellent system of laws and representative institutions for many years, and were not willing to yield their local autonomy in its entirety. The people of the province of Quebec, after experience of a union that lasted from 1841 to 1867, saw decidedly great advantages to themselves and their institutions in having a provincial government under their own control. The people of Ontario recognized equal advantages in having a measure of local government, apart from French Canadian influences and interference. The consequence was the adoption of the federal system, which now, after twenty-six years' experience, we can truly say appears on the whole well devised and equal to the local and national requirements of the people.

We owe our constitution to the action of the Parliament of Great Britain, before whom, as the supreme authority of the

Empire, the provinces of Canada had to come and express their desire to be federally united. In the addresses to the Queen embodying the resolutions of the Quebec conference of 1864 the legislatures of the provinces respectively set forth that in a federation of the British North American provinces, "the system of government best adapted under existing circumstances to protect the diversified interests of the several provinces, and secure harmony and permanency in the working of the Union would be a general government charged with matters of common interest to the whole country, and local governments for each of the Canadas, and for the provinces of Nova Scotia, New Brunswick and Prince Edward Island, charged with the control of local matters in their respective sections."

In the third paragraph the resolutions declare that "in framing a constitution for the general government, the conference, with a view to the perpetuation of our connection with the mother country, and the promotion of the best interests of the people of these provinces, desire to follow the model of the British constitution so far as our circumstances permit." In the third paragraph it is set forth: "The executive authority or government shall be vested in the sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well-understood principles of the British constitution, by a sovereign personally, or by the representative of the sovereign duly authorized." [1]

In these three paragraphs we see tersely expressed the leading principles on which our system of government rests: a federation with a central government exercising general powers over all the members of the union, and a number of local governments having the control and management of certain mat-

[1] The preamble of the B. N. A. Act of 1867 sets forth that "the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom."

ters naturally and conveniently falling within their defined jurisdiction, while each government is administered in accordance with the British system of parliamentary institutions. These are the fundamental principles which were enacted into law by the British North America Act of 1867.

Before I proceed to refer to the general features of the federal system I may here appropriately observe that the practical operation of the government of Canada affords a forcible illustration of a government carried on not only in accordance with the legal provisions of a fundamental law, but also in conformity with what has been well described by eminent writers as conventions or understandings which do not come within the technical meaning of laws since they cannot be enforced by the courts. It was Professor Freeman[1] who first pointed out this interesting and important distinction, but Professor Dicey has elaborated it in a recent work, in which he very clearly shows that "constitutional law" as we understand it in England and in this country, consists of two elements: "The one element, which I have called the 'law of the constitution' is a body of undoubted law; the other element which I have called the 'conventions of the constitution,' consists of maxims or practices which, though they regulate the ordinary conduct of the Crown and of Ministers and of others under the constitution, are not in strictness law at all."[2] In Canada this distinction is particularly noteworthy. We have first of all the British North America Act[3] which lays down the legal rules for the division of powers between the respective federal and provincial authorities, and for the government of the federation generally. But it is a feature of this government that, apart from the written law, there are practices which can only be found in the usages and conventions that have originated in the general operation of the British constitution—that mass

[1] Freeman's Growth of the English Constitution, pp. 114, 115.
[2] Dicey's Law of the Constitution, p. 25.
[3] Imp. Act, 30–31 Vict. c. 3.

of charters, statutes, practices and conventions, which must be sought for in a great number of authorities. For example, if we wish in Canada to see whether a special power is given to the dominion or to the provincial governments we must look to the written constitution—to the ninety-first and ninety-second sections, to which I shall refer later on—but if we would understand the nature of the constitutional relations between the governor-general and his advisers we must study the conventions and usages of parliamentary or responsible government as it is understood in England and Canada. The courts accordingly will decide whether the parliament or the legislatures have a power conferred upon them by the constitutional law whenever a case is brought before them by due legal process; but should they be asked to adjudicate on the legality of a refusal by a government to retire from office on an adverse vote of the people's house, they could at once say that it was a matter which was not within their legal functions, but a political question to be settled in conformity with political conventions with which they had nothing whatever to do. Or if Parliament should continue to sit beyond the five years' term, to which it is restricted by law, and then pass certain acts, the constitutionality of such legislation could be questioned, and the courts could declare it null and void. Or again, the constitutional act requires that every vote of money must be first recommended formally by the governor-general, and if it should appear that parliament had passed an act without that legal formality, the courts could be called upon to consider the legal effect of this important omission. On the other hand, it is a well understood maxim that no private member can initiate a measure imposing a tax on the people, but it should come from a minister of the Crown—a rule rigidly observed in parliament—but this is not a matter of legal enactment which the courts can take cognizance of though it is a convention of the unwritten constitution which is based on well-understood principles of ministerial responsibility. I might pursue this subject at greater length, but I think I have said

enough to show you how interesting is the study of our constitution and what a wide field of reflection it opens up to the student. We have not only a written constitution to be interpreted whenever necessary by the courts, but a vast store-house of English precedents and authoritative maxims to guide us—in other words, an unwritten law which has as much force practically in the operation of our political system as any legal enactment to be found on the statute book.

The British North America Act gave legal effect to the wishes of the people of Canada, as expressed in the addresses of their legislatures, and is consequently the fundamental law, or constitution of the Dominion, only to be amended in its material and vital provisions by the same authority that enacted it.[1] Power is only given in the act itself to the Canadian legislature for the amendment or alteration of certain provisions which are of a merely temporary character, or affect the machinery with which the parliament or legislatures have to operate—such as the readjustment of representation, the elections and trial of controverted elections, the constitution of executive authority in Nova Scotia and New Brunswick, and other matters which do not really affect the fundamental principles of the constitution. All those provisions which constitute the executive authority of the Dominion, regulate the terms of union, and define the limits of the jurisdiction of the several governments, are unalterable except by the supreme legislature of the empire.

We have now to consider, in the first place, the position that the Dominion of Canada occupies in the Empire, and then the relations its government occupies towards the governments of the provinces, with such remarks on the powers and

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[1] The act of 1867 has been amended by two acts, Imp. Stat. 38–39 Vict., c. 38, to remove certain doubts with respect to the power of the Canadian parliament under section 18; and 34 and 35 Vict., c. 28, to remove doubts as to the powers of the Canadian parliament, to establish provinces in the territories.

functions and practical operation of the Constitution as are necessary to make the system intelligible.

The Queen is the head of the executive authority and government of Canada.[1] She is as much the sovereign of Canada as of England or Scotland, and her supremacy can be alone acknowledged in all executive or legislative acts of this dependency. As she is unable to be present in person in Canada, she is represented by a governor-general appointed by Her Majesty in council. In the following chapter I shall refer to his duties in Canada, and it is therefore pertinent here to make only a few necessary references to his imperial position.

This high functionary, generally chosen from public men of high standing in England, has dual responsibilities, for he is at once the governor-in-chief of a great dependency, who acts under the advice of a ministry responsible to parliament, and at the same time the guardian of imperial interests. He is bound by the terms of his commission, and can only exercise such authority as is expressly or impliedly entrusted to him.[2] He must report regularly on all those imperial and other matters on which the secretary of state for the colonies should be informed. For instance, in the negotiations for the recent fishery treaty he was the avenue for all communications between the Canadian and imperial governments. Canada being a colony, and not a sovereign state, cannot directly negotiate treaties with a foreign power, but must act through the intermediary of the imperial authorities, with whom the governor-general, as an imperial officer, must communicate on the part of our government not only its minutes of council, but his own opinions as well, on the question under consideration. In case of bills reserved[3] for the consideration of the imperial

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[1] B. N. A. Act, sec. 9. "The executive government and authority of and over Canada is hereby declared to continue and be vested in the Queen."

[2] Musgrove *v.* Pulido, 5 App. Cas., 102.

[3] A bill affecting the fishery dispute between Canada and the United States was formally reserved in 1886.

government he forwards them to the secretary of state with his reasons for reserving them. The British North America act provides indeed that copies of all acts of the Canadian parliament should be transmitted to the secretary of state for the colonies, that they may be duly considered and disallowed within two years[1] in case they are found to conflict with imperial interests and are beyond the legitimate powers of Canada as a dependency, still in certain essential respects under the control of the imperial state. The commission and instructions, which the governor-general receives from the Queen's government, formerly contained a list of bills which should be formally reserved, divorce bills among other measures; but since the passage of the British North America Act, and the very liberal measure of self-government now conceded to Canada, these instructions have been materially modified,

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[1] B. N. A. Act, 1867, sec. 55. Where a bill passed by the houses of the parliament is presented to the governor-general for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this act and to her majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

56. Where the governor-general assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the act to one of her majesty's principal secretaries of state, and if the Queen in council, within two years after receipt thereof by the secretary of state, thinks fit to disallow the act, such disallowance (with a certificate of the secretary of state of the day on which the act was received by him) being signified by the governor-general, by speech or message to each of the houses of the parliament or by proclamation, shall annul the act from and after the day of such signification.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the governor-general for the Queen's assent, the governor-general signifies, by speech or message to each of the houses of the parliament or by proclamation, that it has received the assent of the Queen in council.

An entry of every such speech, message, or proclamation shall be made in the journal of each house, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of Canada.

and it is only in very exceptional instances that bills are expressly reserved. The general power possessed by the imperial government of disallowing any measure, within two years from its receipt, is considered as a sufficient check, as a rule, upon colonial legislation. The cases where a bill is disallowed are now exceedingly limited. Only when the obligations of the Empire to a foreign power are affected, or an imperial statute is infringed in matters on which the Canadian parliament has not full jurisdiction, is the supreme authority of England likely to be exercised.

The imperial parliament has practically given the largest possible rights to the Dominion government to legislate on all matters of a Dominion character and importance which can be exercised by a colonial dependency; and the position Canada consequently occupies is that of a semi-independent power. Within the limits of its constitutional jurisdiction, and subject to the exercise of disallowance under certain conditions, the Dominion parliament is in no sense a mere delegate or agent of the imperial parliament, but enjoys an authority as plenary and ample as that great sovereign body in the plentitude of its power possesses.[1] This assertion of the legislative authority of the Dominion legislature is quite reconcilable with the supremacy of the imperial parliament in all matters in which it should intervene in the interest of the empire. For that parliament did not part with any of its rights as the supreme authority of the empire, when it gave the Dominion government "exclusive authority" to legislate on certain classes of subjects enumerated in the act of union, and to which we shall later on refer at length. This point has been clearly explained by Mr. Justice Gray of the supreme court of British Columbia, whose opinion as an eminent judicial authority is strengthened by the fact that he was one of the members of the Quebec convention of 1864. In deciding against the constitutionality of

[1] See Regina vs. Burah, 3 App. Cas., 889; Hodge vs. the Queen, 9 Ib., 117.

the Chinese tax bill, passed by the legislature of his province, he laid down that "the British North America Act (1867) was framed, not as altering or defining the changed or relative positions of the provinces towards the imperial government, but solely as between themselves." Proceeding he said that the imperial parliament "as the paramount or sovereign authority could not be restrained from *future* legislation. The British North America Act was intended to make legal an agreement which the provinces decided to enter into as between themselves, but which, not being sovereign states, they had no power to make. It was not intended as a declaration that the imperial government renounced any part of its authority."[1]

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[1] Judgment of Mr. Justice Gray on the Chinese tax bill, Sept. 23d, 1878. An imperial statute passed in 1865 (28 and 29 Vict., c. 63) expressly declares that any colonial law "in any respect repugnant to the provisions of any act of parliament extending to the colony to which such law may relate," shall to the extent of such repugnancy be "absolutely void and inoperative." And in construing an act of parliament, "it shall be said to extend to any colony, when it is made applicable to such colony by the express words or necessary intendment" of the same. Since the passage of this act Canada has received a larger measure of self-government in the provisions of the B. N. A. act, which confers powers on the Dominion and the provincial authorities. No one can doubt that it is competent, as Mr. Justice Gray has intimated, for parliament to pass any law it pleases with respect to any subject, within the powers conferred on the Dominion or provinces: and any enactment repugnant to that imperial statute would be declared null and void by the courts, should the question come before them. But the point has been raised, whether it is in the power of the Canadian parliament or legislatures to pass an act repealing an imperial statute passed previous to the act of 1867, and dealing with a subject within the powers granted to the Canadian authorities. It must be here mentioned that the imperial government refused its assent to the Canadian copyright act of 1872, because it was repugnant, in the opinion of the law officers of the Crown, to the provisions of an imperial statute of 1842 extending to the colony (Imp. Stat., 5 and 6 Vict., c. 45; Can. Sess. P., 1875, No. 28). On the other hand, in the debate on the constitutionality of the Quebec Jesuits' bill mentioned later on, it was contended by the minister of justice that a provincial legislature "legislating upon subjects which are given it by the B. N. A. act, has the power to repeal an imperial statute, prior to the B. N. A. act, affecting those subjects." In support of this position he

But, as I have already shown, this supreme authority of the imperial government will be exercised only in cases where interference is necessary in the interests of the Empire, and in the discharge of its obligations towards foreign powers. In the case of all matters of Dominion or Canadian concern, within the rights and privileges extended to Canadians by the British North America Act, and in accord with the general policy now pursued towards all colonies exercising a full system of local self-government, the imperial authorities can constitutionally claim no authority whatever. That is, they can interfere, to quote a distinguished Canadian statesman, "only in instances in which, owing to the existence of substantial imperial, as distinguished from Canadian, interests it is con-

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referred to three decisions of the judicial committee of the privy council. One of these, in Harris *vs.* Davies (10 App. Cas., p. 279), held that the legislature of New South Wales had power to repeal a statute of James I. with respect to costs in case of a verdict for slander. The second case was Powell *vs.* Apollo Candle Co. (10 App. Cas., p. 282), in which the principles laid down in Regina *vs.* Burah (3 App. Cas., 889) and in Hodge *vs.* the Queen (9 App. Cas., p. 117) were affirmed. The third and most important case as respects Canada was the Queen and Riel (10 App. Cas., p. 675), in which it was decided that the Canadian parliament had power to pass legislation changing, or repealing (if necessary) certain statutes passed for the regulation of the trial of offences in Rupert's Land, before it became a part of the Canadian domain (see Sir J. Thompson's speech, Can. Hansard, March 27, 1889). But several high authorities do not appear to justify the contention of the minister of justice. See Hearn's Government of England, app. II.; "The Colonies and the Mother Country;" Todd's Government in the Colonies, pp. 188–192, etc.; Dicey's Law of the Constitution, pp. 95, *et seq.* The question is too important to be treated hastily, especially as it will come up soon in connection with the copyright act of 1889, in which the same conflict as in 1875 arises. No doubt the fundamental principle that rests at the basis of our constitutional system is to give Canada as full power over all matters affecting her interests as is compatible with imperial obligations. The parliament and legislatures must necessarily repeal, and have time and again repealed, imperial enactments, especially those not suitable to the circumstances of the country. See debate of April 20, 1889, Canadian Commons, on the new copyright bill, which by sec. 7 can only come into force by a proclamation of the governor in council.

sidered that full freedom of action is not vested in the Canadian people."[1]

The complete freedom of action now enjoyed by Canada in matters affecting the commercial interests of the empire, can be understood by reference to the fiscal system now in operation in Canada. This system, generally known as the "National Policy," since its adoption in 1879, imposes a protective tariff, which is in direct antagonism with the free trade policy of the parent state, and is chiefly intended to assist Canadian manufactories against British and foreign competition. This policy, at the outset, was naturally received with much disfavor in England, but when an appeal was directly made in the imperial house of commons to disallow it, the secretary of state for the colonies, on the part of the government, presented, as a reason for non-interference, that the measure in question was not in excess of the rights of legislation guaranteed by the British North America Act, under which (subject only to treaty obligations), the fiscal policy of Canada rests with the Dominion parliament. He further stated that, however much the government might regret the adoption of a protective system, they did not feel justified in opposing the wishes of the Canadian people in this matter.[2]

The queen's privy council of England has also the right to allow appeals to the judicial committee—one of the survivals of the authority of an ancient institution of England—from the courts of Canada. This right is only exercised on principles clearly laid down by this high tribunal, but it is

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[1] Hon. Mr. Blake in a despatch to the secretary of state for the colonies. Can. Sess. P., 1877, No. 13, p. 8.

[2] "The clause with respect to differential duties, (English Hans. Deb., Vol. 244, p. 1311), is now left out of the governor-general's instructions, and the imperial government are content to rely upon the prerogative right of disallowance, as a sufficient security against the enactment of any measure by the parliament of Canada, that should be of such character as to call for the interposition of the royal veto." Todd's Parl. Government in the Colonies, p. 187.

emphatically a right to be claimed by the Canadian people as forming part of the empire under the sovereignty of England. It is a right sparingly exercised, for the people of Canada have great confidence in their own courts, where justice is administered with legal acumen and strict impartiality; but there are decided advantages in having the privilege of resorting in some cases, especially those affecting the constitution, to a tribunal which is generally composed of men whose great learning illustrates all those traditions which make the decisions of England's courts respected the world over.

In the foregoing paragraphs I have mentioned the relations that should naturally exist between the supreme head of the empire and its colonial dependencies. I may here add, what will be obvious to every one, that the power over peace and war, and the general control of such subjects as fall within the province of international law, are vested in the home government, and cannot be interfered with in the least degree by the government of the Dominion.

With these exceptions which limit the jurisdiction of the Dominion as a dependency, Canada possesses under the British North America Act, and in accordance with the general policy of England towards her self-governing colonies, a practically sovereign authority within the limits of her territory, and has assumed all the proportions of an empire. Her constitution enables her to establish new provinces with complete systems of government, as large as any of the commonwealths of the American Republic. The province of Manitoba has already been formed out of the North-west Territories acquired in 1870 from the company of Hudson Bay adventurers who held a charter from the days when sovereigns recklessly granted their followers vast areas of lands, larger than the great kingdoms of Europe. The territories are regulated by the Dominion and granted from time to time such privileges as are commensurate with their increasing population and capacity to carry on a system of local self-government. The Dominion appoints the governors of the provinces

and can dismiss them under the provisions of the constitution, occupying in this respect the position that England formerly held with reference to the provinces before the union of 1867.

Perhaps no one fact more clearly illustrates the important position which Canada has attained within a few years, than the recognition by the imperial government of her absolute right to be consulted, and have a direct voice in the negotiation of all treaties which immediately affect her interests. In the arrangement of the Washington treaties of 1871 and 1888, which dealt with the question of the fisheries—still unhappily unsettled owing to the refusal of the Senate to ratify the last treaty—Canada was represented by one of her ablest statesmen in each case.[1] In negotiations between Canada, France and Spain for a commercial treaty, the imperial government specially commissioned the Canadian high representative in London with full powers to act. The appointment of the high commissioner of Canada was of itself a concession to the growing importance of Canada as a dependency of the empire and of the consequent necessity that has arisen of having in London a representative who would occupy a higher position than the previous agents of the colonies. In the case of all treaties affecting Canada directly, their ratification depends on the assent of her parliament.[2] In fact, the history of all imperial legislation with respect to extradition and other treaties, also proves the desire of the imperial authorities to give due scope to Canadian legislation as far as it is compatible with

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[1] In 1871 by Sir John Macdonald, then as now, Premier. In 1888 by Sir Charles Tupper, now High Commissioner of Canada in London.

[2] See Can. Stat. for 1888 (treaty of Washington), c. 3, sec. 3, and art. XVI of schedule. The 132d section of the B. N. A. Act provides: "The parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the empire and such foreign countries." Also comments of Dr. Todd in Parl. Govt. in Colonies, p. 205.

the interests of the empire. In some treaties it is expressly stipulated that they shall be only applicable to the colonial possessions "so far as the laws, for the time being, in force in such colonies will allow."[1] The large measure of self-government that Canada enjoys in other particulars will be seen in the course of these lectures.

We come now to consider the nature of the federal system, the respective powers of the dominion and provincial governments, and the relations that they bear to one another under the constitution. We have already seen by the three resolutions of the Quebec conference that I have cited, that the object of the founders of the union was to give to the central authority the control over matters of general or *quasi* national importance, and to the provincial governments jurisdiction over matters of a local or provincial nature. In arranging the details of the union the framers were naturally called upon to study carefully the American constitution in its origin and development. In 1864 the civil war was not yet brought to a close, and statesmen, the world over, were naturally in doubt as to its effects on the constitution and union at large. Canadian statesmen saw that ever since the foundation of the weak confederation of 1775, and of the constitution that was subsequently adopted in 1787, to give efficiency, strength and permanency to the union,—"to form a more perfect union," in the language of its preamble,—a great struggle had been going on between the national and the state governments for the supremacy. They saw that certain states had persistently asserted the doctrine of State sovereignty, and the right of nullifying or refusing to be bound by certain acts of the national government. Nullification and secession, it was seen, were justified by lawyers and statesmen, as the last resort of sovereign states, when what was believed to be their inherent rights were invaded by the national government. The statesmen that assembled at Quebec believed that it was a defect in

[1] See treaty with Russia in Can. Statutes for 1887.

the American constitution to have made the national government alone one of enumerated powers, and to have left to the States all the powers not expressly taken from them.[1]

For these reasons mainly the powers of both the Dominion and the Provincial governments are stated, as far as practicable, in express terms with the view of preventing a conflict between them; the powers that are not within the defined jurisdiction of the provincial governments are reserved in general terms to the central authority. In other words "the residuum of power is given to the central instead of to the state authorities." In the British North America Act we find set forth in express words:

1. The powers vested in the Dominion government alone;
2. The powers vested in the provinces alone;
3. The powers exercised by the Dominion government and the provinces concurrently;
4. Powers given to the Dominion government, in general terms.

The powers vested in the parliament of Canada are set forth in the ninety-first section of the constitution, which enacts that the Queen with the advice and consent of the Senate and House of Commons may "make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this act) the exclusive legislative authority of the parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The public debt and property.
2. The regulation of trade and commerce.

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[1] See remarks of Sir John Macdonald, then attorney-general, now premier of Canada: Confederation debates, p. 33.

3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada.
9. Beacons, buoys, lighthouses and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea-coast and inland fisheries.
13. Ferries between a province and a British or foreign country, or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians and lands reserved for the Indians.
25. Naturalization and aliens.
26. Marriage and divorce.
27. The criminal law, except the constitution of the courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

And the section concludes, with the view obviously of giving more definiteness to its provisions and to lessen the chances of conflicts of jurisdiction with the provincial authorities, that "any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

Having, as they believed, definitely stated the general powers that appertain naturally to a central government, exercising jurisdiction over the whole Dominion, the framers of the Act defined in the ninety-second section the powers that the local governments can exercise within their constitutional limits.

The legislature may, in each province, "exclusively make laws" in relation to the classes of subjects enumerated as follows:

1. The amendment, from time to time, notwithstanding anything in this act, of the constitution of the province, except as regards the office of lieutenant-governor.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices, and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province, and of the timber and wood thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the province.
7. The establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the province.
9. Shop, saloon, tavern, and auctioneer and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes.

10. Local works and undertakings other than such as are of the following classes:

a. Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

b. Lines of steamships between the province and any British or foreign country;

c. Such works as, although wholly situate within the province, are before or after their execution declared by the parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.[1]

11. The incorporation of companies with provincial objects.

12. Solemnization of marriage in the province.

13. Property and civil rights in the province.

14. The administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

16. Generally all matters of a merely local or private nature in the province.

A careful consideration of the foregoing section will show how large and important a measure of local self-government is given to all the provincial members of the confederation. It was the object of the framers of the constitution to leave to

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[1] In 1883 the parliament of Canada passed an act declaring certain railways to be "works for the general advantage of Canada" within the meaning of the section. (See Bourinot's Parliamentary Practice in Canada, pp. 587–589). This subject was ably argued before the Supreme Court of Canada in 1888. See Hon. Mr. Blake's argument in the Manitoba case.

the old provinces as many of those powers and privileges that they exercised before the confederation, as are necessary to the efficient working of a local government and at the same time to give the central power effective control over all matters which give unity and permanency to the whole federal organization, of which the provincial entities form political parts or divisions. It will be seen, however, that the all important question of education does not fall within the enumeration of matters belonging to provincial legislation, which I have just given, although it is above all others a subject of local or provincial interest. The reason for this must be sought in the political history of the question.

While the different provinces before confederation were perfecting their respective systems of education, the question of separate schools attained a great prominence. The Protestant minority in Lower Canada, and the Roman Catholic minority in Upper Canada, earnestly contended for such a separation as would give the Protestants, in the former, and the Roman Catholics, in the latter province, control of their own schools, and not oblige the children of the two distinct religious beliefs to mix together. The religious instruction which the Roman Catholics consider inseparable from any public school system could not be accepted by the Protestants. Non-sectarian schools are at direct variance with the principles of the Roman Catholic Church. Finally, in all the provinces, except New Brunswick and Prince Edward Island, separate schools obtained at the time of the union, and it accordingly became necessary to give the minorities guarantees for their continuance, as far as such could be given in the constitution. The British North America Act now provides that while the legislature of a province may exclusively make laws on the subject of education, nothing therein shall prejudicially affect any of the denominational schools in existence before July, 1867. An appeal lies to the governor-general in council from any act of the provincial authority affecting any legal right or privilege that the Protestant or Roman Catholic minority

enjoyed at the time of the union. In case the provincial authorities refuse to act for the due protection of the rights of minorities, in accordance with the provisions of the constitution, then the parliament of Canada may provide a remedy for the due execution of the law provided in this behalf.[1] Parliament, so far, has not been called upon to act on the provisions of this section. The questions that arose in 1872 and in subsequent years, with respect to the New Brunswick school act of 1871, providing for a compulsory rating and assessment for non-sectarian schools, did not come under the law, for the Roman Catholics of New Brunswick did not enjoy separate privileges from other classes of their fellow-citizens previous to confederation; and all the authorities of the Dominion, as well as of England, the minister of justice of Canada, the

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[1] B. N. A. Act, 1867, sec. 93. In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union;

(2.) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec;

(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the governor-general in council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

(4.) In case any such provincial law as from time to time seems to the governor-general in council requisite for the due execution of the provisions of this section is not made, or in case any decision of the governor-general in council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the governor-general in council under this section.

courts, and the colonial secretary of state, and the judicial committee of the privy council, concurred in the opinion that the legislature had a right to enforce the assessments objected to by the Roman Catholics of the province, and had acted legally within the powers conferred upon them by the act of confederation.[1]

The Dominion and Local governments also exercise certain rights in common. Among the subjects on which they have concurrent powers of legislation are agriculture and immigration.[2] The dominion parliament may make laws on these subjects for any and all of the provinces, and each legislature may do the same for the province over which it has jurisdiction, provided no provincial act is repugnant to any dominion act. These provisions have so far worked in the interests of the provinces separately and of the dominion as a whole. Both these authorities are equally interested in the promotion of matters so deeply affecting the development of the natural resources of all sections. The provinces, excepting Manitoba, have the control of their lands and mines, while the dominion is interested in the opening up of the vast territorial area which it has in the north-west; and it is consequently clear that these concurrent powers are wisely arranged in the constitutional act.

If we study the two sections, enumerating the respective powers that fall within the jurisdiction of the dominion parliament and the provincial legislatures, we shall see that there are certain subjects, which may, as the operation of the act

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[1] For history of this case see Todd's Parl. Govt. in Colonies, pp. 346–352.

[2] B. N. A. Act, 1867, sec. 95. In each province the legislature may make laws in relation to agriculture in the province, and to immigration into the province; and it is hereby declared that the parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province, relative to agriculture or to immigration, shall have effect in and for the province, as long and as far only as it is not repugnant to any act of the parliament of Canada.

proves, fall, under certain limitations, within the province of both. For instance, there is insurance, on which both the dominion government and provincial authorities have fully legislated—the former under the general provision giving it the jurisdiction over "the regulation of trade and commerce;" the latter under the very wide right to incorporate companies "with provincial objects." The question of jurisdiction has been decided by the courts of Canada, and affirmed by the privy council, and principles laid down of much importance since they serve to prevent conflict of authority on other subjects and give each jurisdiction that power which it should exercise in accord with the general spirit of the constitution. It is now authoritatively decided that the terms of the eleventh paragraph of the ninety-second section are sufficiently comprehensive to include insurance companies, whose object is to transact business within provincial limits.

If a company desires to carry on operations outside of the province it will come under the provisions of the general federal law, to which it must conform and which contains special provisions for such purposes. But the authority of the dominion parliament to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province. Therefore while the dominion parliament may give power to contract for insurance against loss or damage by fire, the form of the contract and the rights of the parties thereunder, must depend upon the laws of the country or province in which the business is done.[1]

Although the Dominion parliament has exclusive jurisdiction over the criminal law, the local legislatures must necessarily have it within their power, as provided for in the act, to

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[1] See Cartwright's cases on B. N. A. Act, vol. I., pp. 265–350; 4 App. Rep. Ontario, 96, 103; 43 U. C. Q. B. 261, 271; Sup. Court R., vol. IV., pp. 215–349; 45 L. T. N. S., 721.

impose punishment by fine, penalty or imprisonment, for enforcing any law of the province within its legislative authority. The legislature may add "hard labor" to confinement or restraint in prison in legislating on a subject within its jurisdiction. Such a power is not in conflict with the authority of the dominion parliament over criminal matters.[1] This seems a necessary incident to a legislative power. It is a principle which parliament itself applies with respect to civil rights over which the legislatures have exclusive jurisdiction. All the legislative authorities must act, however, within their constitutional spheres, and not push their pretentions to extremes. As in the insurance case just mentioned, powers should be sought from each legislative body within its constitutional limits. Nor should parliament interfere with such details of an organization as are wholly within the jurisdiction of a provincial sovereignty.[2]

It must necessarily happen in the operation of a written constitution like ours that conflicts of jurisdiction will arise in cases where the respective powers of the distinct legislative authorities are not sufficiently defined. Sometimes it is difficult, while the constitution is working itself out, to decide where the jurisdiction rightly lies. The difficulty that may arise in such cases can be seen by reference to the decisions of the Canadian courts and of the judicial committee of the privy council on questions affecting the traffic in intoxicating liquors. The privy council has decided that the Canada temperance act of 1878 which, in effect, authorizes the inhabitants of each town, parish or county to prohibit or to regulate the sale of liquor, and to direct for whom, or for what purposes, and under what conditions, spirituous liquors may be sold therein, does not deal with matters of a purely local nature, nor with property nor civil rights, nor with the raising of a revenue for pro-

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[1] See Hodge *vs.* the Queen, 9 App. Cas., 117.

[2] Remarks of Sir John A. Macdonald, Mr. Blake and others, Can. Hansard, 1883, pp. 499, 500.

vincial, local or municipal purposes, as assigned exclusively to the jurisdiction of the provincial legislatures; but is rather one of those subjects relating to public order and safety which fall within the general authority of parliament to make laws for "the order and good government" of Canada. On the other hand, the same body has decided that it is competent for a legislature of a province to pass an act regulating the issue of licenses for the sale of liquor in the municipalities of a province, and authorizing the appointment of commissioners to define, by resolutions, the conditions and qualifications required to obtain licenses. This learned body has pointed out that the powers of such a provincial act are confined in its operations to municipalities in a province, and entirely local in its character, and in fact identical for the most part with the powers that belonged to municipal institutions under the laws that had been passed by the legislatures previous to confederation. In short, such an act was considered, by their Lordships, as in the nature of police and municipal regulations, calculated to preserve in the municipality peace and public decency, to repress drunkenness and disorderly and riotous conduct.[1] These decisions, to a certain extent, dealing as they do with cognate subjects, will perplex the ordinary lay mind not accustomed to legal subtilties; and there are those who say[2] that in the first decision their Lordships had not the benefit of a very complete argument in favor of the contention

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[1] See 7 App. Cas., 829: *Legal News*, January 19th, 1884.

[2] The late Mr. Justice Henry, one of the authors of the confederation, in a judgment on a cognate question, reiterated the opinion he had expressed on the Canada Temperance act, that the British North America act, "if read in the light which a knowledge of the subject before the passage of that act would produce, plainly gives the power of legislation to the local legislatures in respect of licenses." His whole argument went to show "the right to make laws for the peace, &c., of Canada is as fully restricted to such subjects as do not come within the classes of subjects assigned to the legislatures of the provinces as language can make it;" and that the privy council did not give due consideration to the power of the legislatures over those special subjects. Sup. Court R., vol. XI., pp. 33–39.

for local jurisdiction, and hardly well appreciated the full weight that should be given to the paragraph giving the provinces complete jurisdiction over all matters of a merely local or private nature in a province. At all events, the second decision has recommended itself as in harmony with the general spirit of local powers granted to the provincial legislatures. As it was, the immediate effect of these decisions, in a measure involving contradictions, was to throw the liquor-licensing legislation of the country into much confusion; for the Dominion government considered itself justified in passing a general license act, which subsequently was declared *ultra vires*, except where the act dealt with wholesale and vessel licenses, or carried into effect certain provisions of the Canada Temperance act.[1]

The conclusion we come to after studying the operation of the constitutional act, until the present time, is that while its framers endeavored to set forth more definitely the respective powers of the central and local authorities than is the case with the constitution of the United States, it is not likely to be any more successful in preventing controversies constantly arising on points of legislative jurisdiction. The American constitution is remarkable for its precision, the generality of its principles, the avoidance of too many details, and the elasticity of which it is capable when applied to the needs and exigencies of the nation and states. The effort was made in the case of the Canadian constitution to go in the other direction, and more fully define the limits of the authority of the dominion and its political parts; but while great care was evidently taken to prevent the dangerous assertion of provincial rights, it is clear that it has the imperfections of all statutes, when it is attempted to meet all emergencies. Happily, however, by means of the courts in Canada, and the tribunal of last resort in England, and the calm deliberation which the parliament is

[1] See Bourinot's Manual of Constitutional History, pp. 139–146.

learning to give to all questions of dubious jurisdiction, the principles on which the federal system should be worked are, year by year, better understood and the dangers of continuous conflict lessened. It is inevitable, if we are to judge from the working of a federal system in the United States, that there should be, at times, a tendency either to push to extremes the doctrine of the subordination of the provinces to the central power, or on the other hand to claim powers on behalf of the provincial organizations, hardly compatible with their position as members of a confederation based on the principle of giving complete jurisdiction to the central government over all matters of national and general import. It is obvious that in certain legislation the Dominion parliament must trench upon some of the powers exclusively given to the local organizations, but it cannot be argued, with a due regard to the true framework of the constitutional act and the principles that should govern a federal system like ours, that the powers of the provinces should be absorbed by the dominion or central authority in cases of such apparent conflict. Referring to this point the privy council calls attention to the fact that the general subject of "marriage and divorce" is given to the jurisdiction of the dominion parliament, and the "solemnization of marriage" to the legislature of a province. It is evident that the solemnization of marriage would come within the general description of the subject first mentioned; yet no one can doubt, notwithstanding the general language of the ninety-first section, that this subject is still within the exclusive authority of the legislatures of the provinces. "So," continues the privy council, "the raising of money by any mode or system of taxation is enumerated among the classes of subject in section ninety-one, but though the description is sufficiently large and general to include direct taxation within the province in order to aid the raising of a revenue for provincial purposes assigned to the provincial legislatures by the ninety-second section it obviously could not have been intended

that in this instance also the general power should override the particular one."[1]

It is now laid down by the highest judicial authorities that the dominion parliament has the right to interfere with "property and civil rights" in so far as such interference may be absolutely necessary for the purpose of legislating generally and effectually in relation to matters confided to the parliament of Canada. Laws designed for the promotion of public order, safety or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of parliament, to make laws for the good order and government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the parliament of Canada. Few if any laws could be made by the parliament for the peace, order and good government of Canada which might not, in some incidental way, affect property and civil rights; and it could not have been intended when assuring to the provinces exclusive legislative authority on the subject of property and civil rights, to exclude the parliament from the exercise of this general power whenever any such incidental interference would result from it.[2] As on the one hand the federal parliament cannot extend its own jurisdiction by a territorial extension of its laws, and legislate on subjects constitutionally provincial, by enacting them for the whole dominion; so, on the other hand, a provincial legislature cannot extend its jurisdiction over matters constitutionally federal, by a territorial limitation of its laws and legislate on matters left to the federal power, by enacting them for the province only, as for instance, incorporate a bank for the province.[3]

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[1] L. T. N. S., 721: Cartwright, vol. I., pp. 272, 273.
[2] 7 App. Cas., 829.
[3] Can. Sup. Court R., IV., 310.

When the British North America Act enacted that there should be a legislature for a province, and that it should have exclusive authority to make laws for the provinces and for provincial purposes in relation to the matters enumerated in the ninety-second section, it conferred powers not in any sense to be exercised by delegation from, or as agents of, the imperial parliament, but authority as plenary and as ample within the limits prescribed by the section, as the imperial parliament, in the plenitude of its power, possesses and could bestow.[1]

In short, each legislative body should act within the legitimate sphere of its clearly defined powers, and the dominion parliament should no more extend the limits of its jurisdiction, by the generality of the application of its law, than a local legislature should extend its jurisdiction by localizing the application of its statutes.[2]

I might cite other opinions bearing on the same important question, but I have already given enough to show the principles that should generally prevail if the federal constitution is to be efficiently carried out with a true consideration of all the interests involved.[3] The federal government should work in harmony with provincial institutions, and by leaving them full scope within the limits of the constitution at once give strength and stability to the central government and confidence to the various local organizations without which it could not exist.

In one most important respect the dominion government exercises a direct control over the legislation of each province. While the imperial government can disallow any act of the

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[1] 9 App. Cas., 117; Cartwright, vol. III., p. 162.

The same power exists in the States. "When a particular power," says Judge Cooley, "is found to belong to the States, they are entitled to the same complete independence in its exercise as the national government in wielding its own authority."

[2] *Legal News* (the late Mr. Justice Ramsay) on Hodge vs. the Queen, January 26th, 1884.

[3] See Bourinot's Manual of Constitutional History, chap. XIV.

Canadian parliament at variance with the interests of the Empire, the governor in council can, within one year from its receipt, disallow any act of a provincial legislature. Here is one of the evidences which the constitution affords of the subordinate position in certain particulars of the provincial authorities. It illustrates the fact that the dominion government now occupies those relations towards the provincial governments that England, before the confederation, held with reference to the provinces, and still does in the case of all colonies outside of Canada. This power of disallowance is not limited in terms by the British North America Act,[1] but may be exercised even with respect to an act clearly within the constitutional jurisdiction of the provincial legislatures. It has so far been exercised in a very insignificant number of cases, compared with the vast amount of legislation that annually passes the provincial bodies; but in some of these cases it caused much irritation, notably in Manitoba, whose provincial railway acts were vetoed on several occasions on the ground that they were in conflict with obligations that the dominion had assumed towards the Canadian Pacific Railway. These restrictions were only removed after parliament had given the Pacific railway certain privileges as compensation for the removal of their railway monopoly in the north-west. From these and other instances of the exercise of this political power, the student will see that it is one to be exercised with great discretion and judgment, as otherwise it may involve conse-

[1] Sec. 90. The following provisions of this act respecting the parliament of Canada, namely,—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of acts and the signification of pleasure on bills reserved,—shall extend and apply to the legislatures of the several provinces as if those provisions were here re-enacted and made applicable in terms to the respective provinces and the legislatures thereof, with the substitution of the lieutenant-governor of the province for the governor-general, of the governor-general for the Queen, and for a secretary of state, of one year for two years, and of the province for Canada.

quences fatal to the harmony and integrity of the confederation. This power can be properly exercised when the act under consideration is beyond the constitutional competency of the legislature, or when it is repugnant to dominion legislation in cases where there is concurrent jurisdiction, or when it is hostile to the rights enjoyed by a minority under the constitution, or when clearly hostile or dangerous to the peace and unity of the dominion generally. Before advising the governor-general on an act of dubious import, or only partially defective, the council must consider whether it will not be sufficient to inform the legislative body, responsible for its passage, of the objectionable features, and allow it to go into operation on the understanding that they will be removed by an amending act. Or in cases where the act is useful, though *ultra vires*, the government has recommended confirmatory legislation by the dominion parliament, or in matters of doubt they have been left to the courts to decide whenever a question should arise for their determination. The cases are so numerous when the dominion government is called upon to exercise its power of allowance or disallowance, that it is out of the question that I should here attempt to lay down with any accuracy, the various reasons and principles that should guide it in this important work of supervision. The danger arises from the exercise of the power, on the grounds of public policy, in the case of a question clearly within the constitutional powers of a legislature. The principle that should prevail, as a rule, is to leave to their operation all acts that fall within the powers of the provincial legislature, which within its legal sphere has as absolute a right of legislation as the dominion parliament itself; and if the dominion authorities, at any time, for sufficient reasons, consider it necessary to interfere in provincial affairs, they must be prepared to justify their action before parliament and the country, so deeply interested in the preservation of the union. Opinion is divided as to the wisdom of a provision which gives so sovereign a power to a political body, and it may be doubted if in this

respect our constitution is an improvement upon that of the United States. The veto is so much valued in the states that while originally only one state, Massachusetts, vested it in the governor, now all but four have it. The President vetoes the acts of Congress, which can, however, override his decision by a two-thirds vote in each house; and the governors in each state, as just remarked, exercise the same power with respect to state legislation. But the disallowance of state legislation by the executive at Washington, has never existed, and was never suggested in the case of the American federal system.[1]

The adoption of such a principle in 1787 would have been, in all probability, fatal to the passage of the constitution of the states, many of whom agreed to that measure with doubt and suspicion. They agreed, wisely, as experience seems to show, to leave the judicial branch of the constitution to determine the constitutionality of all acts of congress or of the legislature.

Political considerations cannot enter into this judicial determination. As long as a statute is within the constitutional jurisdiction of a body that passed it, the federal judiciary cannot do otherwise than so declare, even if it be objectionable at the time on grounds of public policy. The future will soon prove whether this extraordinary supervision, given to the dominion over the provinces, is calculated to strengthen

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[1] "While the constitution was being framed the suggestion was made, and for a time seemed likely to be adopted, that a veto on acts of state legislatures should be conferred upon the federal congress. Discussion revealed the objections to such a plan. Its introduction would have offended the sentiment of the states, always jealous of their autonomy; its exercise would have provoked collisions with them. The disallowance of a state statute, even if it did really offend against the federal constitution, would have seemed a political move, to be resented by a political counter-move. . . . . But by the action of the courts the self-love of the states is not wounded, and the decision annulling their laws is nothing but a tribute to the superior authority of the supreme enactment to which they were themselves parties, and which they may themselves desire to see enforced against some other state on some not remote occasion."—Prof. Bryce's American Commonwealth, I., p. 343.

the confederation, or has in it the elements of political discord and disunion. As long as the dominion and provincial governments are politically identified, the danger from conflict is minimized, but it is possible to suppose the case of violent antagonism between these governments when the central power might in a moment of passion or arrogance use its authority to check or thwart the government made subordinate to it in this particular. Happily, so far, the history[1] of this large power is not calculated to raise apprehensions that it is likely to be recklessly exercised; for the cases which have heretofore created much discussion, and even discontent, have been defended on grounds of public policy or the public faith, though the wisdom and soundness of that policy has been doubted by others who have looked at the whole question from a purely provincial point of view. The sound sense of the people must always prevail in a country like this, and keep all governments from unduly and rashly interfering with the constitutional rights of the different sections of the dominion, to whom has been granted such a complete system of local self-government as is compatible with the unity and permanency of the dominion at large.[2]

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[1] See correspondence, reports of the Ministers of Justice, and orders in council upon the subject of provincial legislation, 1867–1887, compiled under direction of the Ministers of Justice, by W. E. Hodgins, for a complete history of the exercise of this important responsibility thrown upon the dominion government.

[2] The inexpediency of disallowing any measure believed to be within the constitutional jurisdiction of a province was strongly asserted in the debate in the Canadian House of Commons in 1889, on the Quebec Statute, 51–52 Victoria, c. 13. "An act respecting the settlement of the Jesuits' Estates." The Jesuits had been suppressed by the Pope in 1773, and their property taken possession of in 1800 by the British government, which applied the revenues thereof to public instruction in the province of Lower Canada; but the Roman Catholic Church, always through its Bishops, contended that it should be vested with all the estates as a result of the suppression of the society. This body, however, has been reinstated in these later times, and an act of incorporation was granted it by the Quebec legislature in 1887. The Quebec government then carried through the first-mentioned

It is on the courts of Canada, aided by the ripe judgment and learning of the judicial committee of the privy council, we must, after all, mainly depend for the satisfactory operation of our constitutional act. The experience of the United States has shown the inestimable value of the decisions given by the judges of the supreme and the federal courts on questions that have arisen, from time to time, in connection with their con-

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act, authorizing the payment of $400,000 as compensation for the sale of the estates formerly held by the Jesuits, and as a means of settling a long standing difficulty. These estates, it must be remembered, became the property of the province after confederation and were entirely at the disposal of the legislature.

The negotiations with the See of Rome, and the Society are formally set forth in the preamble of the act in the shape of correspondence between the Quebec government and the representatives of those religious bodies, and it is expressly stated that the agreement will be binding only in so far as it shall be ratified by the Pope and the Legislature, and the amount of compensation was to remain as a special deposit until the former had made known his wishes respecting its distribution. The government in treating on the question, did not "recognize any civil obligation but merely a moral obligation." Subsequently the funds were distributed by the Pope—the greater part to certain educational institutions in the province, and the remainder to the Society. Out of this settlement a heated controversy, involving old world and ancient issues, has arisen in Canada, and was transferred to parliament by a resolution, formally asserting that the government should have at once disallowed the act as beyond the power of the legislature because, among other things, "it recognizes the usurpation of a right by a foreign authority, namely, His Holiness, the Pope, to claim that his consent was necessary" to dispose and appropriate the public funds of a province. It was contended on the other hand that the Pope, as the head of the Church, was simply called upon to act as an arbitrator between the disputants in a matter in which the interests of the Church were involved. The inference that may be drawn from the debate on the whole question in the House of Commons is this: that the almost unanimous vote in favor of the course of the government in allowing the bill when it came formally before them (one hundred and eighty-eight against thirteen) was chiefly influenced by the conviction that the legislature of the province had an unquestionable right to dispose of its own funds as it might think proper, or in the words of the minute of council, approved by the governor-general, "the subject matter of the act is one of provincial concern, only having relation to a fiscal matter entirely within

stitution. The name of Chief Justice Marshall, especially, must be always associated with their fundamental law; for it is in a great measure owing to his great legal knowledge, to his broad views, to his capacity of comprehending the true spirit, scope and meaning of the principles laid down in the constitution, and to his ability to apply them to the circumstances that surrounded him at very critical times, that the

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the control of the legislature of Quebec." In the course of the learned debate[1] that took place on the merits of this very vexatious issue a very clear exposition was given by several speakers from their respective points of view of the principles by which the relations between the dominion and the provincial governments should be governed. But there is another conclusion which I think may be fairly deduced from a debate of this character. An executive power which can be thus questioned in the political arena seems obviously fraught with perilous consequences. If all questions of the constitutionality of a provincial act could be decided only in the courts, parliament would be saved the discussion of matters, which, once mixed up with political and religious issues, must necessarily be replete with danger in a country like Canada, with a population nearly half Roman Catholic. In Canada and the United States, there is so much respect for the law and the bench that the people rarely question the wisdom of a judicial decision on any subject of importance. Can as much be said for the judgment of a political body, however honestly rendered it may be?

The following remarks of a very judicious writer, Professor Dicey, in the Law of the Constitution, (p. 166) may well be quoted in this connection: "The main reason why the United States have carried out the federal system with unqualified success is that the people of the union are more thoroughly imbued with constitutional ideas than any other existing nation. Constitutional questions arising out of either the constitutions of the several states or the articles of the federal constitution are of daily occurrence, and constantly occupy the courts. Hence the people become a people of constitutionalists; and matters which excite the strongest possible feeling,—as for instance, the right of the Chinese to settle in the country,—are determined by the judicial bench, and the decision of the bench is acquiesced in by the people. This acquiescence or submission is due to the Americans inheriting the legal notions of the common law; that is, of the most legal system of law, if the expression may be allowed, in the world." See also Hare's American Constitutional Law, vol. I., pp. 122, 123.

[1] See Canadian Hansard for April 26, 27 and 28, 1889.

union gained strength during the years he presided over the Supreme Court.[1]

The Quebec convention of 1864 appears to have fully appreciated the necessity of having a Supreme Court of Canada which would bear as much resemblance as possible to the American tribunal; for they agreed to a resolution, which is now embodied in the section of the British North America Act which provides "for the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada." The Judiciary of Canada, from the lowest to the highest, can and do constantly decide on the constitutionality of acts, passed by the various legislative authorities of the Dominion. They do so in their capacity as judges and expounders of the law, and not because they have any especial commission, or are invested with any political powers or duties by the constitution.[2]

Unlike the United States, Canada has no federal courts established in the provinces, although the section just quoted seems to provide for some such courts, should they be considered necessary. The constitution, maintenance and organization of the courts in the provinces will be seen, by reference

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[1] Professor Bryce (The American Commonwealth, II., p. 1) very tersely shows the importance of the influence that the decisions of the supreme court have exercised on the constitution: "Hence, although the duty of the court is only to interpret, the considerations affecting interpretation are more numerous than in the case of ordinary statutes, more delicate, larger in their reach and scope. They sometimes need the exercise not merely of legal acumen and judicial fairness, but of a comprehension of the nature and methods of government which one does not demand from the European judge, who walks in the narrow path traced for him by ordinary statutes. It is therefore hardly an exaggeration to say that the American constitution, as it now stands, with the mass of foregoing decisions which explain it, is a far more complete and finished instrument than it was when it came first new from the hands of the convention. It is not merely their work but the work of the judges, and, most of all, of one man, the great Chief Justice Marshall."

[2] See II. Bryce, p. 184.

to the ninety-second section, to be within the matters placed under provincial jurisdiction, though the judges are appointed and paid by the dominion government, with the exception of the courts of probate in Nova Scotia and New Brunswick.[1]

In 1875, however, it was deemed advisable to pass an act providing for the establishment of a Supreme Court and Exchequer Court of Canada.[2] But the court is only a general court of appeal for Canada in a limited sense, since the existing right of appeal in the various provinces to the privy council has been left untouched. Nor can it be called a final court of appeal for Canada, since the privy council entertains appeals from its judgments by virtue of the exercise of the royal prerogative.[3] This court consists of a chief justice and five puisne judges, two of whom, at least, must be appointed from the bench or bar of the province of Quebec—a provision intended to give the court the assistance of men specially versed in French Canadian law. With certain exceptions set forth in the act, an appeal can lie to this court and from the highest court of final resort in a province. The governor-general in council may refer to the supreme court for hearing or consideration any matter which he deems advisable in the public interest;[4] but in certifying their opinion, the judges,

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[1] Secs. 96–97. The Maritime Court of Ontario is, however, a federal court.

[2] 38 Vict., ch. 11. The act was amended in 1887, by removing the Exchequer Court jurisdiction from the Supreme Court and giving it to a judge especially appointed for that purpose. 50–51 Vict., ch. 16.

[3] Cassell's Practice of the Supreme Court of Canada, p. 4.

[4] No such provision exists in the case of a federal judiciary. That branch of the government can be called upon "only to decide controversies brought before them in a legal form; and therefore are bound to abstain from any extra-judicial opinions upon points of law, even though solemnly requested by the executive. President Washington, in 1793, requested its opinion upon the constitution of the treaty with France of 1778; but they declined to give any opinion for the reasons just stated." Story's Commentaries (Cooley's ed.), § 1571.

Some of the state constitutions provide for a similar reference by the governor or legislature to the Supreme Court of the state. "The

following the practice of the judicial committee, do not give any reasons. On more than one occasion this power of referring a question, on which there is a legal or constitutional difficulty, has been found very useful to the parties interested, as well as to the country at large.[1] It is also provided that controversies between the dominion and any province, or between the provinces themselves, may be referred to the exchequer court, and on appeal from that court to the supreme court, and cases in which the question of the validity of a dominion or provincial act is shown to be material to the issue, may come within the jurisdiction of the court, whenever the legislature of one province has passed an act—as has been done by Ontario, Nova Scotia, and British Columbia—agreeing to such references. Either house of parliament may also refer to the court any private bill for its report thereon, but so far the senate alone has availed itself of this provision in the case of a bill of doubtful jurisdiction.[2]

It will be seen from this summary of the powers of the court that it is intended to make it, as far as practicable, a

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judges of the Supreme Court of Massachusetts suggest in their very learned and instructive opinion delivered to the legislature, December 31, 1878, that this provision, which appears first in the Massachusetts constitution of 1780, and was doubtless borrowed thence by the other states, evidently had in view the usage of the British constitution, by which the King as well as the House of Lords, whether acting in their judicial or in their legislative capacity, had the right to demand the opinion of the twelve judges of England. This is still sometimes done by the House of Lords; but the opinions of the judges are not necessarily followed by that House, and though always reported are not deemed to be binding pronouncements of law similar to the decisions of a court." Bryce's American Commonwealth, II., 48, 49.

[1] Cassell's Practice of the Supreme Court of Canada, p. 4. The latest case of reference to the judges was one of a serious controversy between the government of Manitoba and the Canadian Pacific Railroad, which refused permission to a Manitoba railroad to cross its track; but this case was referred under section 99 of the Railway Act (57 Vict., c. 29, 1888). The question of the validity of the Liquor License Act was referred under sec. 26 of a special act, 47 Vict., c. 32.

[2] Bourinot's Parl. Practice in Canada, pp. 606–607.

court for the disposal of controversies that arise in the working of the constitutional system of Canada. So far its decisions have won respect in Canada, and have been rarely overruled by the judicial committee of the privy council, which, by virtue of Her Majesty's royal prerogative, entertains appeals from the court where it is considered that any error of law has been made, and substantial interests have been involved.[1]

As I have in the first paragraph of this lecture referred to the importance of this appeal to the privy council, it is not necessary that I should dwell here on the subject.

I have now shown you the leading features of the constitutional relations that exist between the dominion and the provinces, and have stated some of the principles, as I understand them, that should guide the construction of the fundamental charter under which each authority acts. In other lectures, I shall review the duties and functions of the executive, administrative and parliamentary bodies by which the federal system is governed; but there are a few other points that properly fall within the scope of this lecture. First of all, and the most important in many ways, are the methods that the constitution provides for meeting the financial necessities of the dominion and of the provinces. The ninety-second section shows that the dominion parliament can raise money by any mode or system of taxation, borrow money on the public credit, issue paper money and regulate trade and commerce. Revenue is

[1] See Sec. 71 of Supreme Court Act, which after setting forth that the judgment of the court shall be final, adds the proviso, "saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative. But by an act passed by the Canadian parliament in 1888, (51 Vict., c. 43) it is provided that "notwithstanding any royal prerogative" no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal in the United Kingdom. Exception was, I understand, taken to this act by the imperial authorities, but it does not appear to have been disallowed. This strong assertion of Canadian judicial independence rests on the powers given to the Canadian parliament by sections 91 (sub-s. 27) and 101 of B. N. A. Act, 1867.

accordingly raised principally from duties imposed on imports, and on certain articles, chiefly tobacco and liquors, manufactured in the dominion, and in addition to these there are certain minor revenues collected from the sale of lands in the north-west territories, over which the dominion government has exclusive control. All these moneys are paid into the treasury, and form what is known in law as "the Consolidated Revenue Fund of Canada," out of which are paid all the costs, charges and expenses incident to the collection and management of this fund, and all the expenses of government.[1]

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[1] B. N. A. Act, 1867, sec. 102. All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick before and at the union had and have power of appropriation, except such portions thereof as are by this act reserved to the respective legislatures of the provinces, or are raised by them in accordance with the special powers conferred on them by this act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this act provided.

103. The consolidated revenue fund of Canada shall be permanently charged with the costs, charges and expenses incident to the collection, management and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the governor-general in council until the parliament otherwise provides.

104. The annual interest of the public debts of the several provinces of Canada, Nova Scotia and New Brunswick at the union shall form the second charge on the consolidated revenue fund of Canada.

105. Unless altered by the parliament of Canada, the salary of the governor-general shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the consolidated revenue fund of Canada, and the same shall form the third charge thereon.

106. Subject to the several payments by this act charged on the consolidated revenue fund of Canada, the same shall be appropriated by the parliament of Canada for the public service.

107. All stocks, cash, bankers' balances, and securities for money belonging to each province at the time of the union, except as in this act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the provinces at the union.

108. The public works and property of each province enumerated in the third schedule to this act shall be the property of Canada.

These moneys are, in every instance, voted by parliament, but while certain sums are authorized annually by the appropriation act—which comprises the annual grants voted every session in supply—other payments are made under the sanction of statutes. These statutes, which are permanent and can only be repealed or amended by act of parliament, provide for salaries of the governor-general, lieutenant-governors, ministers of the crown, judges, and other high functionaries,

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109. All lands, mines, minerals and royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the union, and all sums then due or payable for such lands, mines, minerals or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same.

110. All assets connected with such portions of the public debt of each province as are assumed by that province, shall belong to that province.

111. Canada shall be liable for the debts and liabilities of each province existing at the union.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the province of Canada exceeds at the union sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

113. The assets enumerated in the fourth schedule to this act, belonging at the union to the province of Canada, shall be the property of Ontario and Quebec conjointly.

114. Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union eight million dollars, and shall be charged with the interest at the rate of five per centum per annum thereon.

115. New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

116. In case the public debts of Nova Scotia and New Brunswick do not at the union amount to eight million and seven million dollars respectively, they shall respectively receive, by half-yearly payments in advance from the government of Canada interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

117. The several provinces shall retain all their respective public property not otherwise disposed of in this act, subject to the right of Canada to

whose remuneration it is understood should not depend on the annual votes. All moneys are paid out of the treasury under certain forms required by statute, and a thorough system of audit prevents any public expenditure not authorized by parliament, although the law permits the issue of governor-general's warrants in certain cases of emergency, but these, too, must at the first opportunity be laid before, and be sanctioned by parliament. Large sums are, at times, borrowed on

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assume any lands or public property required for fortifications or for the defence of the country.

118. The following sums shall be paid yearly by Canada to the several provinces for the support of their governments and legislatures:

	DOLLARS.
Ontario	Eighty thousand.
Quebec	Seventy thousand.
Nova Scotia	Sixty thousand.
New Brunswick	Fifty thousand.
	Two hundred and sixty thousand;

and an annual grant in aid of each province shall be made, equal to eighty cents per head of the population as ascertained by the census of one thousand eight hundred and sixty one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two provinces amounts to four hundred thousand souls, at which rate such grants shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each province; but the government of Canada shall deduct from such grants, as against any province, all sums chargeable as interest on the public debt of that province in excess of the several amounts stipulated in this act.

119. New Brunswick shall receive, by half-yearly payments in advance from Canada, for the period of ten years from the union, an additional allowance of sixty-three thousand dollars per annum; but as long as the public debt of that province remains under seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars.

120. All payments to be made under this act, or in discharge of liabilities created under any act of the provinces of Canada, Nova Scotia and New Brunswick respectively, and assumed by Canada, shall, until the parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the governor-general in council.

the public credit, under the conditions laid down by parliament, in order to meet the heavy expenditures required for the extensive system of public works in which the dominion is engaged. The treasury also issues a number of notes, of which the sum of four dollars is the highest denomination—the banks of Canada being banks of issue for large sums within fixed limits—but the dominion issue in any one year may not exceed four million dollars, and the total amount issued and outstanding, at any time, may not exceed twenty millions, secured for redemption by gold and Canadian guaranteed securities.[1]

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121. All articles of the growth, produce or manufacture of any one of the provinces shall, from and after the union, be admitted free into each of the other provinces.

122. The customs and excise laws of each province shall, subject to the provisions of this act, continue in force until altered by the parliament of Canada.

123. Where customs duties are, at the union, leviable on any goods, wares or merchandises in any two provinces, those goods, wares and merchandises may, from and after the union, be imported from one of those provinces into the other of them, on proof of payment of the customs duty leviable thereon in the province of exportation, and on payment of such further amount (if any) of customs duty as is leviable thereon in the province of importation.

124. Nothing in this act shall affect the right of New Brunswick to levy the lumber dues provided in chapter fifteen of title three of the Revised Statutes of New Brunswick, or in any act amending that act before or after the Union, and not increasing the amount of such dues; but the lumber of any of the provinces other than New Brunswick shall not be subject to such dues.

125. No lands or property belonging to Canada or any province shall be liable to taxation.

126. Such portions of the duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick had before the union, power of appropriation, as are by this act reserved to the respective governments or legislatures of the provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this act, shall in each province form one consolidated revenue fund to be appropriated for the public service of the province.

[1] Can. Rev. Stat., chaps. 28, 29, 30, 31, 32, 33, etc.

As respects the provinces, their revenues arise from the proceeds of royalties from mines (chiefly valuable in Nova Scotia), the sales of Crown lands and minerals, and the subsidies granted by authority of the British North America Act for the purposes of enabling them to carry on their government. The ninety-second section authorizes the legislatures to impose direct taxation on the province in order to raise a revenue for provincial purposes, to borrow money on the sole credit of the province, and to raise money from shop, saloon, tavern and auctioneer licenses, in order to the raising of a revenue for provincial, local, or municipal purposes. When the Quebec convention sat this question of provincial revenue was one that gave the delegates the greatest difficulty. In all the provinces the sources of revenue were chiefly customs and excise duties which had to be set apart for the general government. Some of the delegates from Ontario, where there had been for many years an admirable system of municipal government in existence which provided funds for education and local improvements, saw many advantages in direct taxation; but the representatives of the other provinces could not consent to such a proposition, especially in the case of Nova Scotia, New Brunswick and Prince Edward Island, where there was no municipal system, and the people depended almost exclusively on the annual grants of the legislature for the means to meet their local necessities.[1] All of the delegates, in fact, felt that to force the provinces to resort to direct taxation as the only method of carrying on their government, would be probably fatal to the success of the scheme, and it was finally decided to grant annual subsidies, based on population, the relative debts, the financial position, and such other facts as should be brought fairly into the consideration of the case. These financial arrangements were incorporated with the act of union,[2] and necessarily entail a heavy expense

[1] See speech of Hon. George Brown, Confederation Debates, 1865, p. 92.
[2] See Can. Rev. Stat., c. 46.

annually on the exchequer of the dominion. In consequence of the demand that arose in Nova Scotia for "better terms," previous to and after the union, the parliament of the dominion, in the session of 1869, legislated so as to meet the difficulty that had arisen, and it was accordingly decided to grant additional allowances to the provinces, calculated on increased amounts of debt as compared with what they were allowed to enter the union.[1]

Manitoba, British Columbia, and Prince Edward Island also obtained similar annual subsidies in accordance with the general basis laid down in the constitution. It is from these subsidies that the provinces derive the greater part of their annual revenues. Ontario is in the most favorable position from the very considerable revenue raised from lands and timber dues. The provinces are also at times borrowers on the money market, especially Quebec, in order to meet pressing liabilities. In the maritime provinces a system of municipal institutions, except in Prince Edward Island, has been at last adopted, and the local treasury in a measure relieved; but still on account of the lavish expenditure, at times considered necessary by the legislature, there is too often a complaint that the local funds are insufficient for general purposes.

From this necessarily meagre summary of the financial methods by which the dominion and the provinces meet the large expense required for public purposes, it will be seen that there is an intimate connection between the governments that does not exist in the American union, where each state meets all its local requirements by direct taxation and is not dependent on the federal authority.

The wisdom of this policy has been more than once questioned since the union has been working itself out. As a large portion of their revenues—in certain cases the largest portion—is not derived from local sources, there has not been always,

[1] See Can. Rev. Stat., c. 46.

it is believed, that effort for economical expenditure that would probably have been made if all the funds were raised from local sources, and from direct taxation as in the United States. The consequence already has been that demands have been made from time to time, on the dominion treasury for the subsidizing of railway and other schemes, which are really provincial undertakings, and which are assisted as a means of relieving the local treasury and satisfying the representatives from that section. Each province should be, as far as possible, in a position of local independence, and free from suspicion of political pressure on the central government at critical times.

The federal government executes its postal and revenue services through its own officers; but, unlike the United States, it has no courts of its own in the provinces for federal objects. Still the result is practically the same, for it can use the whole system of the administration of justice should it be necessary to resort to it. The dominion government can claim the allegiance of the people of the whole country to assist it in working out efficiently and securing those great national interests, of which it is the guardian under the constitution. It has the control of the militia, and can protect the existence of the dominion, and repress rebellion as in the case of the unfortunate disturbances in the north-west in 1886. The government of Canada has a *quasi* national character, and is bound to maintain by all the means that the constitution gives it the union into which the provinces freely entered in 1867. On the other hand, the province in many respects touches more nearly the civil and the political side of the people within its limits than the central authority with its more general or national attributes of power. The exaction of indirect taxation does not come home immediately to all classes in every day life like the tax collector who presents himself under the municipal system in vogue in the provinces. Comfort and convenience, liberty and life, civil rights and property, endless matters that daily affect a community are

directly within the jurisdiction of the provincial organisms. If the dominion should cease to-morrow to exercise its constitutional powers, the province would still remain—for it existed before the union—and its local organization could very soon be extended to embrace those powers which now belong to the central authority.

The federal structure, whatever may be its defects and weaknesses in certain details, on the whole seems well adapted to meet the wants and necessities of the people. From the foundation to the crowning apex it has many attributes of harmony and strength. It is framed on principles which, as tested by British and American experience, are calculated to assist national development and give full liberty to local institutions. At the bottom of the edifice are those parish, township, county and municipal institutions which are eminently favorable to popular freedom and local improvement. Then comes the more important provincial organization, divided into those executive, legislative and judicial authorities, which are essential to the working of all provincial constitutions. Next comes the central government, which assumes a national dignity and affords a guarantee of protection, unity and security to the whole system.

The apex of the structure is the imperial power—in other words, the Sovereign who holds her exalted position, not by the caprice of a popular vote, but with all the guarantees of permanency with which the British constitution surrounds the Throne.

LECTURE III.

THE GOVERNMENT AND THE PARLIAMENT.

Sir Henry Maine, in common with other eminent writers on government, has dwelt on the fact that the framers of the existing Federal Union of the United States regarded the opinions expressed by Montesquieu in the *Esprit des Lois* as of paramount importance, and that none had more weight with the writers of the *Federalist*, that admirable series of commentaries on the constitution, than that which affirmed the essential separation of the executive, legislative and judicial powers. The lines accordingly that separate these respective departments are drawn with remarkable distinctness in the American system. Their object was to impose every possible check upon the several agencies of government, so that one could not combine with the other, to the injury of the third. In the Canadian as in all other systems that derive their origin from England, this same wise principle is carefully carried out, though not to the same extent as in the United States. The judiciary has been wisely kept entirely distinct from all other authorities since 1841, and it is now impossible for the judges to sit in the legislative and executive councils and exercise a direct influence in political affairs. In the case of the executive, however, as I shall show later on, there is a direct connection between it and the legislative department, which in many respects operates in the direction of good government and efficient legislation.

As I have already shown in a previous lecture the head of the executive authority is the Queen, who is represented by

the governor-general advised by a privy council.[1] The governor-general as the acting head of the executive of Canada, assembles, prorogues and dissolves parliament and assents to or reserves bills in the name of her majesty; but, in the discharge of these and all other executive duties which are within the limits of his commission, and in conformity with the constitution, he acts entirely by and with the advice of his council who must always have the support of the house of commons. Even in matters of imperial interest affecting Canada, he consults with the council and submits their views to the colonial secretary of state in England. On Canadian questions clearly within the constitutional jurisdiction of the dominion he cannot act apart from his advisers, but is bound by their advice. Should he differ from them on some vital question of principle or policy he must either recede from his own position or be prepared to accept the great responsi-

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[1] B. N. A. Act, 1867, sec. 10. The provisions of this act referring to the governor-general extend and apply to the governor-general for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

11. There shall be a council to aid and advise the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that council shall be from time to time chosen and summoned by the governor-general and sworn in as privy councillors, and members thereof may be from time to time removed by the governor-general.

12. All powers, authorities and functions which, under any act of the parliament of Great Britain, or of the parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the union vested in or exercisable by the respective governors or lieutenant-governors of those provinces, with the advice, or with the advice and consent, of the respective executive councils thereof, or in conjunction with those councils, or with any number of members thereof, or by those governors or lieutenant-governors individually, shall, as far as the same continue in existence and capable of being exercised after the union in relation to the government of Canada, be vested in and exercisable by the governor-general, with the advice or with the advice and consent of or in conjunction with the

bility of dismissing them; but such an alternative is an extreme exercise of authority and not in consonance with the sound constitutional practice of modern times, should his advisers have a majority in the popular branch of the legislature. Should he, however, feel compelled to resort to this extreme exercise of the royal prerogative, he must be prepared to find another body of advisers, ready to assume the full responsibility of his action and justify it before the house and country. For every act of the crown, in Canada as in England, there must be some one immediately responsible, apart from the crown itself. But a governor, like any other subject, cannot be "freed from the personal responsibility for his acts nor be allowed to excuse a violation of the law on the plea of having followed the counsels of evil advisers."[1] Cases may arise when the governor-general will hesitate to come to a speedy conclusion on a matter involving important consequences, and then it is quite legitimate for him to seek advice

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Queen's privy council for Canada, or any members thereof, or by the governor-general individually, as the case requires, subject nevertheless (except with respect to such as exist under acts of the parliament of Great Britain or of the parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the parliament of Canada.

13. The provisions of this act referring to the governor-general in council shall be construed as referring to the governor-general acting by and with the advice of the Queen's privy council for Canada.

14. It shall be lawful for the Queen, if her majesty thinks fit, to authorize the governor-general from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the governor-general such of the powers, authorities and functions of the governor-general as the governor-general deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies, shall not affect the exercise by the governor-general himself of any power, authority or function.

15. The command-in-chief of the land and naval militia, and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

[1] Hearn's Government of England, p. 133.

from his official chief, the secretary of state for the colonies, even if it be a matter not immediately involving imperial interests. For instance, when a question arose in 1879 whether the governor-general ought to follow the advice of his council and dismiss the lieutenant-governor of Quebec, Lord Lorne, at the suggestion of the premier, referred the whole matter to her majesty's government for its consideration and instructions, as it involved important questions connected with the relations between the dominion and the local governments as well as the proper construction to be put on the constitution.[1] This case, however, shows that the government of England, in accordance with their fixed policy, will refrain from expressing any opinion upon the merits of a case of a purely Canadian interest, and will not interfere with the exercise of the undoubted powers conferred upon the governor-general by the British North America Act, for determining the same. Indeed we may even go further and say that the effect of the advice of the imperial government in this partic-

[1] I refer here to a remarkable episode in the political history of Canada, (1878–1879) in which we find abundant evidence of the bitterness of party conflict in Canada. M. Letellier de St. Just was appointed lieutenant-governor of Quebec by a Liberal administration at Ottawa, and thought proper to dismiss his executive council, though it had a large majority in the legislature. The constitutionality of his action was at once sharply attacked in the dominion parliament by the Conservative party which was politically identified with the dismissed ministers, but it was only in the senate where it had a majority that a resolution was passed censuring him for an act emphatically declared to be at variance with the principles of responsible government. The conservatives soon afterwards came into power and a similar resolution was again proposed and passed by a very large majority. The government, who had not up to that time, thought it incumbent on them to assume any responsibility under section 59 of B. N. A. Act which gave them the power of dismissal, then recommended to Lord Lorne that the lieutenant-governor be dismissed; but the governor-general, as stated in the text, hesitated to accept the advice and preferred to ask instructions from the imperial authorities. In consequence of their answer, he had no other alternative than to consent to the removal of M. Letellier on the ground as set forth in the order in council, that his usefulness was gone. The cause assigned had not quite the merit of novelty, for similar language had been

ular matter must be to restrain within very narrow limits the occasions when a governor will hereafter hesitate to accept the advice of his constitutional advisers, and refer to England a question which is clearly among the powers belonging to the Canadian government. In matters affecting imperial interests, of course the governor-general is not confined by any such limitation; but it is impossible to lay down any rule available for such emergencies. The truth is, as it has been well observed by a Canadian statesman and constitutionalist[1] whose opinions are deserving of the highest possible respect, "that imperial interests are, under our present system of government, to be secured in matters of Canadian executive policy, not by any clause in a governor's instructions (which would be practically inoperative, and if it can be supposed to be operative would be mischievous), but by mutual good feeling and by proper consideration for imperial interests on the part of her majesty's Canadian advisers; the crown necessarily retaining all its constitutional rights and powers which would be exercisable in any emergency in which the indicated securities

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used in the case of Governor Darling who was dismissed from the governorship of Victoria by the imperial government because he "had placed himself in a position of personal antagonism towards almost all those whose antecedents pointed them out as most likely to be available in case of a change of ministry." Governor Darling's mistake, however, was not in dismissing his ministry, but in yielding to its pressure and consenting to the clearly unconstitutional course of sanctioning the levy of duties on a mere resolution of the assembly at the time in antagonism to the council. (See Engl. Commons Pap., 1866, vol. L., p. 695.) M. Letellier, it may be added, obtained the assistance of a new council, which assumed the responsibility of his acts, and appealed to the people, who sustained them by a bare majority, which soon disappeared, until the party with which Mr. Letellier had brought himself into conflict came again into office, but not until after he had been dismissed. The consequences of this affair were serious, not only in creating a violent agitation for a long while but in the effect upon the unfortunate principal actor, who felt his position most keenly, and soon afterwards died.

[1] The Hon. Edward Blake in a dispatch to the Secretary of State, Can. Sess. P. 1887, No. 13.

might be found to fail." The official communications between the imperial government and the governor-general that have been printed since 1867 and indeed from the days of Lord Elgin, show two things very clearly: First, that the governors-general now fully recognize the obligation resting upon them of following in their entirety the principles of English constitutional government in all their relations with their cabinet affecting matters within its functions and authority; secondly, that the imperial government never intrude their instructions on the governor-general in such matters, and while they do not directly deprecate a reference to them for advice respecting questions even within Canadian jurisdiction, yet they do not encourage it but prefer that Canadians should settle all such questions for themselves, as the logical sequence of a very complete system of local government long since granted to the dominion by the parent state.

It will, therefore, be evident that power is practically vested in the ministry and that the governor-general, unless he has to deal with imperial questions, can constitutionally perform no executive function except under the responsibility of that ministry. The royal prerogative of mercy is no longer exercised on his own judgment and responsibility, but is administered as it is in England, pursuant to the advice of the ministry.[1] With respect to the allowance or disallowance of provincial acts, ever since the coming into force of the British North America Act, the governor-general "has invariably decided on the advice of his ministers and has never asserted a right to decide otherwise. He has been always content to exercise this prerogative under the same constitutional limitations and restraints which apply to all other acts of executive authority in a constitutional government."[2]

[1] In the resolutions of the Quebec convention, the prerogative of pardon was to be exercised by the lieutenant-governors of the provinces; but in the British North America Act this important power is entrusted only to the governor-general as the direct representative of the Queen.

[2] Todd's Parl. Gov't. of the Colonies, p. 342.

Even in the exercise of the all important prerogative of dissolution, which essentially rests in the Crown, he acts on the advice of his advisers, and it is obvious from many examples in the recent political history of Canada he does not hesitate to follow that advice as a rule.[1] Of course it may be said that the more frequent are the opportunities given to the people to express their opinions on the policy of a government, the greater is the security granted to popular liberty, and the more likely is parliament to represent public sentiment. In 1882 parliament had been only four years in session and Lord Lorne accepted the advice of his council to dissolve parliament, but there were certainly good reasons for such a course at that time, since there had been a readjustment in the representation of the House, as a consequence of the new census taken in 1881, and the national or protective policy had been less than three years in operation and the earliest opportunity should be given to obtain thereon the verdict of the people. The difficulties that surround a governor-general in such cases, when there is a powerful party in power, are very obvious, especially when we consider that he is hardly likely to meet with support from his official superiors in England in a matter which they would consider of purely Canadian importance. Such facts obviously are the natural outcome of parliamentary government, though, in the opinion of some thoughtful publicists, they raise the question whether a governor-general, as well as the sovereign whom he represents, might not be called upon in some cases to refuse to be bound

[1] Doubt has been cast upon the constitutional propriety of the course pursued in 1887, when the governor-general allowed the premier to appeal to the people, though parliament had only held four sessions and had not completed its constitutional existence of five years from the date of the return of the writs in 1882. The government of the day had a large majority in the popular branch. I cite this case simply to illustrate the extent to which the governor-general, as astute as he was able, thought himself constitutionally bound to follow the advice of his ministry in view of all the reasons submitted to him, and of which, no doubt, we have not yet full knowledge.

by such advice, and to consider whether it is party ambition or the public interest that is at stake. I need, however, hardly add that the representative of the crown must be prepared to see his action in such a grave exercise of the prerogative fully justified by another set of advisers in case he finds himself in irreconcilable conflict with those who give him advice which he cannot bring himself to follow after a thorough consideration of all the facts as they have been presented to him. Happily the relations that exist between the Queen's representative and her council are not likely to be strained while both fully appreciate their respective functions and follow those principles of action which experience and usage have shown to be necessary to prevent undue friction and difficulty. It is the duty of the council, through their premier, to instruct the governor-general thoroughly on all questions that are matters of executive action, and to keep him informed on any matter that should properly come under his cognizance. Mutual consultation can do everything to bring councillors of the crown into perfect harmony with their constitutional head; and the circumstances must be very peculiar and extraordinary indeed when a conflict can arise between these authorities that is not susceptible of an amicable arrangement at last.

Occupying a position of unswerving neutrality between opposing political parties, and having no possible object in view except to subserve the usefulness and dignity of his high office, the governor-general must necessarily, in the discharge of his important functions, have many opportunities of promoting the interests of the country over whose government he presides. While he continues to be drawn from the ranks of distinguished Englishmen, he evokes respect as a link of connection between the parent state and its dependency. In the performance of his social duties he is brought into contact with all shades of opinion and wields an influence that may elevate social life and soften the asperities of public controversy by bringing public men to meet on a neutral ground and under conditions which win their respect. In the tours

he takes from time to time throughout the wide territories of the dominion he is able to make himself acquainted with all classes and interests, and by the information he gathers in this way of the resources of the country he can make himself an important agent in the development of Canada.[1] In the encouragement of science, art and literature he has also a fruitful field in which he may perform invaluable service that would not be possible for anyone who does not occupy so exalted a position in the country.[2]

The British North America Act of 1867 provides that the council, which aids and advises the governor-general, shall be styled the "queen's privy council for Canada."[3] Here we have one of the many illustrations that the constitutional system of the dominion offers of the efforts of its authors to perpetuate as far as possible in this country the names and attributes of the time-honored institutions of England. The privy council of Canada recalls that ancient council whose history is always associated with that of the king as far back as the earliest days of which we have authentic record. Sometimes it was known as the *aula regia* or the *curia regis*, which possessed ill-defined but certainly large legislative and judicial as well as executive powers; but its principal duty, it is clear, was to act as an advisory body according as the king might wish its counsel. At all times in English history there appears to have been a council near the king who could assist him with their advice and be made responsible for his acts.[4] Too often it became

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[1] Lord Dufferin's public speeches during his administration in Canada directed large attention in Europe to the remarkable capabilities of Canada.

[2] During the régime of the Marquis of Lorne and H. R. H. the Princess Louise, the royal academy of arts and the royal society of Canada were established on a successful basis.

[3] The executive council of the little state of Delaware was originally called the privy council—the only example we have of such a title in the old colonies.

[4] "It is our good fortune to be the inheritors of institutions in which the spirit of freedom was enshrined and to have had forefathers who knew how to defend them. The king of England was a *rex politicus*, a political crea-

the unscrupulous instrument of the sovereign, and by the time of Elizabeth it had practically superseded the parliament, except when money had to be raised by the taxation of the people. But with the end of the Tudor dynasty, its power began to wane and the parliament increased in strength and influence. The Stuarts made use of it to establish a secret star chamber to usurp the functions of the courts, and we hear later of the formation of a committee called enviously a cabal or cabinet, on account of the king finding it convenient from time to time to have a small body of advisers on whose ability to serve him he could have every confidence, and in whose deliberations he could find that secrecy which would not have been possible in the consultations of the privy council as a whole. In the course of the various changes that have occurred in English constitutional history its judicial functions disappeared and now only survive in the judicial committee, while it has been practically denuded of all former executive functions, and exists only as a purely honorary and dignified body. The cabinet council—a name originating in the days of Charles I—is now the great executive and administrative council of state, though in no other respect does it resemble that irresponsible creation of the Stuart king. Still the cabinet which is the governing power of the ministry of modern times, is a name unknown to the law. The privy council is the only body legally recognized, and on the formation of a new ministry it is usual to inform the public simply that her majesty has been pleased to appoint certain members of the privy council to certain high offices of state. The cabinet, or inner council, is only a portion of the ministry

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tion, the highest functionary and servant of the state, not a merely personal ruler, and that was his recognized capacity. In the next place, from early times, earlier than the beginning of regular parliaments, the people of England held a firm hold on the idea of ministerial responsibility. They acted upon it fitfully and sometimes capriciously, but they never let it go. If the king ruled ill, it was because he had bad advisers." Contemporary Review, January, 1889, p. 53.

and varies in numbers according to the exigencies of state. This ministry is drawn from members of the two houses of parliament, chiefly from the house of commons, and their tenure of office depends upon their having and retaining the confidence of a majority of the people's house, in accordance with the principles of parliamentary government, which were first roughly laid down after the revolution of 1688, though it took very many years before the present system of ministerial responsibility reached its present perfection.

The terms, "cabinet," "ministry," "administration" and "government," are indifferently applied to the privy council of Canada; for there is not in this country a select cabinet as in the parent state. Privy councillors, when not in the government, retain their honorary rank, but it is simply one that entitles them to certain precedence on state occasions and has no official responsibility or meaning. When the governor-general appoints a body of advisers to assist him in the government he calls them to be members of the privy council and to hold certain offices of state. It sometimes happens, however, that ministers are appointed without a portfolio or department, and two representatives of the government in the senate are in that position at the present time. The number of members of the ministry or privy council in office vary from thirteen to fifteen of whom thirteen are heads of departments, whose functions are regulated by statute. One of these officers, however, is president of the privy council, who has practically no departmental duties, but it is a position which the premier, as it happens at the present time, may well occupy in view of his large political responsibilities as the head of the government. While holding this virtually honorary office, he is often called upon to act for ministers who are ill or absent from the country, and it is found convenient to connect with it the charge of the virtually subordinate department of Indian affairs.[1] The other ministers with portfolios are the

[1] Sir John Macdonald was president of the council and superintendent general of Indian affairs, an office generally held by the minister of the

minister of finance, minister of public works, minister of railways and canals, minister of the interior, postmaster-general, minister of justice, secretary of state, minister of inland revenue, minister of customs, minister of militia, minister of marine and fisheries, and minister of agriculture. When we consider the population of Canada and its position as a colonial dependency this ministry of thirteen departments (exclusive of the two at present without portfolios) seems extremely large compared with the government of the United States or of England itself. At the inception of confederation it was considered advisable to have all sections of the confederation fully represented, and the practice has ever since been to maintain the proportion from the maritime provinces, Ontario and Quebec. In 1889 the exceptional position of the northwest was for the first time considered by appointing the ex-lieutenant-governor of the territories to the office of minister of the interior, who has special charge of the affairs of that wide region. It has been sometimes urged that it would have been wise had it been possible in 1867 to follow the English practice and appoint a certain number of political under-secretaries with seats in the lower house. In this way the necessity for so large a cabinet might have been obviated, and an opportunity given to train men for a higher position in the councils of the country. A step was taken in this direction in 1887 but the law so far has remained a dead letter on the statute book.[1]

As the members of a cabinet only occupy office while they retain the confidence of the lower house, the majority necessarily sit in that body, though there is always a certain representation (two at the present time) in the upper branch. Since the commons hold the purse strings, and directly represent the people, all the most important departments, especially of finance and revenue, must necessarily be represented in that

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interior. He acted also for Mr. Pope, minister of railways, while suffering from illness ending in death during the past session of parliament.

[1] Remarks of Sir John Macdonald, Can. Hansard, 1887, pp. 862, 863.

branch. The ministry, then, is practically a committee of the two houses. Its head is known as the premier or prime minister, who, as the leader of a political party, and from his commanding influence and ability, is in a position to lead the house of commons and control the government of the country. His title, however, is one unknown to the law, though borrowed from the English political system. It originates from the fact that he is first called upon by the sovereign (or in Canada by her representative) to form a ministry. The moment he is entrusted with this high responsibility it is for him to choose such members of his party as are likely to bring strength to the government as a political body, and capacity to the administration of public affairs. The governor-general on his recommendation appoints these men to the ministry and the occasions that can arise when he may see reasons for objecting to a particular nominee are so exceptional —indeed we have no case in our recent history—that we may practically consider the choice of colleagues by the premier as final and conclusive. As a rule, on all matters of public policy the communications between the cabinet and governor take place through the premier, its official head. If he dies or resigns the cabinet is *ex-officio* dissolved, and the ministers can only hold office until a new premier is called to the public councils by the representative of the crown. It is for the new premier then to ask them to remain in office, or to accept their resignation. In case a government is defeated in parliament, the premier must either resign or else convince the governor-general that he is entitled to a dissolution on the ground that the vote of censure does not represent the sentiment of the country. This is one of the occasions when the governor-general is called upon to exercise an important prerogative of the crown in circumstances of great delicacy; but fortunately for him the principles that have been laid down in the course of many years in the working of the British system in England and her dependencies can hardly fail to enable him, after a full consideration of all the circumstances of the case before

him, to come to a conclusion that will satisfactorily meet the exigency. If the circumstances are such as to justify a dissolution of parliament the premier must lose no time in obtaining an expression of public opinion; and should it be apparently in his favor he must call parliament together with as little delay as possible; or if, on the other hand, the public sentiment should be unequivocally against him he should resign; for this course has been followed in recent times both in England and Canada. Strictly speaking, parliament alone should decide the fate of the ministry, but the course in question is obviously becoming one of the conventional rules of the constitution likely to be followed whenever there is a decided majority against an administration at the polls.

From what precedes it will therefore be seen that while there is a constitutional separation between the executive and legislative authorities, still it may be said that, in Canada as in England, parliament governs through an executive dependent on it. The queen is at once the head of the executive authority and the first branch of the legislative department. The responsible part of the executive authority has a place in the legislative department. It is a committee of the legislature, nominally appointed by the queen's representative, but really owing its position as a government to the majority of the legislative authority. This executive dependence on the legislature is an invaluable, in fact the fundamental principle of parliamentary government. This council thereby becomes responsible at once to crown and parliament for all questions of public policy and of public administration. In a country like ours legislation is the originating force and the representatives of the people are the proper ultimate authority in all matters of government. The importance then of having the executive authority represented in parliament and immediately amenable to it is obvious. Parliament is in a position to control the administration of the executive authority by having in its midst men who can explain and defend every act that may be questioned, who can lead the house in all important

matters of legislation,[1] and who can be censured or forced from office when they do wrong or show themselves incapable of conducting public affairs. By means of this check on the executive, efficiency of government and guarantees for the public welfare are secured beyond question. The people are able, through their representatives, to bring their views and opinions to bear on the executive immediately. Every branch of the public service may be closely examined, every questionable transaction sifted, and every information obtained, by the methods of parliamentary inquiry, as ministers are present to answer every question respecting the administration of their departments and to justify and defend their public policy. The value of this British system of parliamentary government can be best understood by comparing it with the American system which so completely separates the executive from the legislature. In the United States the President is irremovable, except in case of a successful impeachment, for four years, and he appoints his cabinet, who are simply heads of departments responsible to no one except himself. This cabinet may be well compared in one respect to the cabinet councils of the Stuarts, since like them its existence does not depend on the confidence or support of the legislature. Its members have no seats in either the senate or house of representatives and are in no way responsible for, or exert any direct influence on public legislation. A thoughtful American writer[2] comparing the two systems, shows very clearly how inferior in many respects it is to that of England or of Canada:—"It is this

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[1] "It is therefore the executive government which should be credited with the authorship of English legislation. We have thus an extraordinary result. The nation whose constitutional practice suggested to Montesquieu his memorable maxim concerning the executive, legislative and judicial powers, has in the course of a century falsified it. The formal executive is the true source of legislation; the formal legislature is incessantly concerned with executive government." Sir H. Maine, Essay on the Constitution of the United States, Quarterly Review, No. 313.

[2] Congressional government. By Woodrow Wilson.

constant possibility of party diversity between the executive and congress which so much complicates our system of government. Party government can exist only when the absolute control of administration, the appointment of its officers as well as the direction of its means and policy, is given immediately into the hands of that branch of government whose power is paramount—the representative body. . . . At the same time it is quite evident that the means which congress has of controlling the departments and of exercising any searching oversight at which it aims are limited and defective. Its intercourse with the president is restricted to the executive messages, and its intercourse with the departments has no easier channels than private consultations between executive officers and the committees, informal interviews of the ministers with individual members of the congress, and the written correspondence which the cabinet officers from time to time address to the presiding officers of the two houses at stated intervals or in response to formal resolutions of inquiry. Congress stands almost helpless outside of the departments."[1]

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[1] Professor Bryce (The American Commonwealth, I., p. 304) expresses the same opinion after a thorough study of the imperfections and weaknesses of the American system: "In their efforts to establish a balance of power, the framers of the constitution so far succeeded that neither power has subjected the other. But they underrated the inconveniences which arise from the disjunction of the two chief organs of government. They relieved the administration from a duty which European ministers find exhausting and hard to reconcile with the proper performance of administrative work,—the duty of giving attendance in the legislature and taking the lead in its debates. They secured continuity of executive policy for four years at least, instead of leaving government at the mercy of fluctuating majorities in an excitable assembly. But they so narrowed the sphere of the executive as to prevent it from leading the country, or even its own party in the country. They sought to make members of congress independent, but in so doing they deprived them of some of the means which European legislatures enjoy of learning how to administer, of learning even how to legislate on administrative topics. They condemned them to be architects without science, critics without experience, censors without responsibility." See also De Tocqueville, I., p. 124.

I have so far briefly explained some of the constitutional duties and responsibilities that rest upon the head of the executive and his advisers, and must now proceed to review the nature of the functions of the senate and house of commons, who, with the queen, constitute the parliament of Canada.[1]

LEGISLATIVE POWER.

[1] B. N. A. Act, 1867, sec. 17. There shall be one parliament for Canada, consisting of the queen, an upper house styled the senate, and the house of commons.

18. The privileges, immunities and powers to be held, enjoyed and exercised by the senate and by the house of commons and by the members thereof respectively, shall be such as are from time to time defined by act of the parliament of Canada, but so that any act of the parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such act, held, enjoyed and exercised by the commons house of parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

19. The parliament of Canada shall be called together not later than six months after the union.

20. There shall be a session of the parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the parliament in one session and its first sitting in the next session.

The Senate.

21. The senate shall, subject to the provisions of this act, consist of seventy-two members, who shall be styled senators.

22. In relation to the constitution of the senate, Canada shall be deemed to consist of three divisions—

1. Ontario;

2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick; which three divisions shall (subject to the provisions of this act) be equally represented in the senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; and the Maritime Provinces by twenty-four senators—twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec each of the twenty-four senators representing that province shall be appointed for one of twenty-four electoral divisions of Lower Canada specified in schedule A to chapter one of consolidated statutes of Canada.

23. The qualifications of a senator shall be as follows—

(1.) He shall be of the full age of thirty years.

In all countries possessing a parliamentary system, and especially in those which have copied their institutions from the British model, an upper chamber has been generally considered a necessary part of the legislative machinery. In the United States the necessity of having such a check upon the acts of the body directly representing the people, was recognized from the outset in the constitution of the congress and of every state legislature. Two houses always formed part of the provincial legislatures of British North America from 1791 until 1867, when Ontario, whose example has been followed by other provinces of the confederation, decided to confine her legislature to an elected assembly and the lieutenant-governor.

(2.) He shall be either a natural-born subject of the queen, or a subject of the queen, naturalized by an act of the parliament of Great Britain, or of the parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of one of the provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the union or of the parliament of Canada after the union.

(3.) He shall be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seized or possessed for his own use and benefit of lands or tenements held in franc-alleu or in roture, within the province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages and incumbrances due or payable out of, or charged on or affecting the same;

(4.) His real and personal property shall be together worth four thousand dollars over his debts and liabilities;

(5.) He shall be resident in the province for which he is appointed;

(6.) In the case of Quebec, he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

24. The governor-general shall from time to time, in the queen's name, by instrument under the great seal of Canada, summon qualified persons to the senate; and, subject to the provisions of this act, every person so summoned shall become and be a member of the senate and a senator.

25. Such persons shall be first summoned to the senate as the queen by warrant under her majesty's royal sign manual thinks fit to approve, and their names shall be inserted in the queen's proclamation of union.

26. If at any time, on the recommendation of the governor-general, the queen thinks fit to direct that three or six members be added to the senate, the governor-general may, by summons to three or six qualified persons (as

The upper house of the Canadian parliament bears a name which goes back to the days of ancient Rome, and also invites comparison with the distinguished body which forms so important a part of the American congress; but neither in its constitution nor in its influence does it bear any analogy with those great assemblies. An eminent authority on such questions, the late Sir Henry Maine, has very truly observed that on close inspection the senates of the ancient world will be found to answer very slightly to the conception of second chambers of a legislature, but that the first real anticipation of a second chamber, armed with a veto on the proposals of a separate authority, and representing a different interest, occurs

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the case may be), representing equally the three divisions of Canada, add to the senate accordingly.

27. In case of such addition being at any time made, the governor-general shall not summon any person to the senate, except on a further like direction by the queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four senators, and no more.

28. The number of senators shall not at any time exceed seventy-eight.

29. A senator shall, subject to the provision of this act, hold his place in the senate for life.

30. A senator may, by writing under his hand, addressed to the governor-general, resign his place in the senate, and thereupon the same shall be vacant.

31. The place of a senator shall become vacant in any of the following cases:—

(1.) If for two consecutive sessions of the parliament he fails to give his attendance in the senate:

(2.) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to a foreign power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a foreign power:

(3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter:

(4.) If he is attainted of treason, or convicted of felony or of any infamous crime:

(5.) If he ceases to be qualified in respect of property or of residence: provided that a senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the government of Canada while holding an office under that Government requiring his presence there.

in that much misunderstood institution, the Roman tribunate.[1] Nor does the Canadian senate compare in legislative authority with the American body of that name. The first is nominated by the crown for life and has limited powers even of legislation, since it cannot initiate or even amend money or revenue bills; the other, which is elected by the state legislatures for a limited

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32. When a vacancy happens in the senate, by resignation, death or otherwise, the governor-general shall, by summons to a fit and qualified person, fill the vacancy.

33. If any question arises respecting the qualification of a senator or a vacancy in the senate, the same shall be heard and determined by the senate.

34. The governor-general may from time to time, by instrument under the great seal of Canada, appoint a senator to be speaker of the senate, and may remove him and appoint another in his stead.

35. Until the parliament of Canada otherwise provides, the presence of at least fifteen senators, including the speaker, shall be necessary to constitute a meeting of the senate for the exercise of its powers.

36. Questions arising in the senate shall be decided by a majority of voices, and the speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

147. In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation, in the senate of Canada, of four members, and (notwithstanding anything in this act) in case of the admission of Newfoundland, the normal number of senators shall be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the constitution of the senate, divided by this act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those provinces shall not be increased at any time beyond ten, except under the provisions of this act, for the appointment of three or six additional senators under the direction of the queen.

[1] "The Constitution of the United States," Quarterly Review, No. 313. Mr. Goldwin Smith has said on this point: "The illustrious council from which the name of Senate is derived was not an upper house, but the government of the Roman Republic, having the executive practically under its control and the initiative of legislation in its hands." See Doutre's Constitution of Canada, p. 66.

term, has a veto on treaties and important appointments to office, can amend appropriation bills so as to increase money grants to any amount, and can sit as a court of impeachment. In one respect, however, the senate of Canada can be compared to the American house; it is a representative of the federal, as distinguished from the popular principle of representation. The three great divisions of Canada, the Maritime Provinces, Ontario and Quebec, have been each given an equal representation of twenty-four members with a view of affording a special protection to their respective interests—a protection certainly so far not called into action even in the most ordinary matters. Since 1867 the entrance of other provinces and the division of the territories into districts has brought the number of senators up to seventy-eight in all, but at no time can the maximum number exceed eighty-four, even should it be necessary to resort to the constitutional provision allowing the addition of three or six new members—a position intended to meet a grave emergency, such as a deadlock in a political crisis. The senators are appointed under the great seal of Canada by the governor-general on the recommendation of his council, and must be of the full age of thirty years, and have real and personal property worth four thousand dollars over and above their liabilities. The experience that Canada had of the working of an elective legislative council since 1854 was considered in the convention of 1864 to be such as to justify the delegates in preferring a nominated body. The great expense entailed by an electoral contest in the large districts into which the province was divided was one feature which was strongly pointed out at the conference.[1] It was not deemed advisable to have two bodies elected by the people, since the danger of legislative conflict was rendered more imminent. While the experience of Victoria in Australia certainly seems to support this opinion, the history of the American congress might be considered to support an argu-

[1] See remarks of Hon. George Brown in Confederation Debates, p. 89.

ment the other way. The object of the framers of the constitution has been, in this as in other cases, to follow the model of the British parliamentary system as far as our circumstances will permit. Hence the house of commons can alone initiate revenue or money bills, and the senate is confined by usage to a mere rejection of such measures—a rejection justified only by extraordinary circumstances. In every respect it shows the weakness of an upper house under the British system and none of the prestige that attaches to an ancient body of hereditary legislators and of judicial powers as a court of appellate jurisdiction like the house of lords. The senate, imitating the lords, tries divorce cases;[1] but this is a matter of convenience to which the commons agrees without objection, since under the constitution the upper house has no special privileges in this respect. It is expressly set forth in the British North America Act that the powers and privileges and immunities of the senate and house of commons cannot at any time exceed those of the English commons. As a body of legislators the senate can compare favorably with any assembly in Canada or other dependencies of England. It has within its ranks men of fine ability and large experience in commerce, finance and law; and its weakness seems inherent in the nature of its constitution. The system of the nomination by the crown—practically by the government of the day—tends to fill it with men drawn from one political party whenever a particular ministry has been long in office and fails to give it that peculiarly representative character which would enlarge its usefulness as a branch of the legislature and give it more influence in the country. It is a question worth considering whether the adoption of such changes as would make it partly nominative and partly elective would not give it greater weight in

[1] In Nova Scotia, New Brunswick, Prince Edward Island and British Columbia the courts of law continue to try divorce cases, as before 1867, and parliament has not interfered with those tribunals under the power conferred upon it by the fundamental law. See Gemmill's Parliamentary Divorce, c. 4.

public affairs. For instance, if the provincial legislatures had the right of electing a fixed number at certain intervals, and the universities were given the same privilege, the effect would be, in the opinion of some persons, to make it more representative of provincial interests, and at the same time add to its ranks men of high culture and learning.[1]

But no doubt as long as our parliamentary system is modelled on the English lines, an upper house must more or less sink into inferiority when placed alongside of a popular house, which controls the treasury and decides the fate of administrations. It is in the commons necessarily that the majority of the ministers sit and the bulk of legislation is initiated. In 1888 the two houses passed one hundred and eleven bills and of these only three public bills and five private bills originated in the upper house, and the same condition of things has existed since 1867, though now and then, as in 1889, there is a spasmodic effort to introduce a few more government bills in the senate. In the session of 1888 twenty-six commons bills were amended out of the one hundred and three sent up to the upper house, and the majority of these amendments were verbal and unimportant. Under these circumstances it may well be urged that by arrangement between the two houses, as in the English parliament, a larger number of private bills should be presented in the senate,[2] where there is a considerable number of gentlemen whose experience and knowledge entitle them to consider banking and financial questions, and the various subjects involved in legislation.

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[1] In the Prussian upper house the universities are represented and the towns of a certain number of inhabitants by their mayors. In principle it is far more of a popular assembly than the English house of lords. See an interesting article in the Nineteenth Century (vol. XVI., No. 89) on the federal states of the world.

[2] As I have already shown, divorce bills invariably originate in the senate, which has recently adopted an amended set of rules under the able supervision of Senator Gowan, and the select committee to which all such bills are referred is governed by the rules of evidence and other formalities of the courts as far as possible.

For reasons already given, government measures must as a rule be introduced in the commons, but still even in this respect there might be an extension of the legislative functions of the upper chamber, and the effort made in 1889 by the government in this direction ought certainly to be continued until it becomes a practice and not a mere matter of temporary convenience. In 1887 there were only ten private bills presented in the senate out of the seventy that passed the two houses; in 1888 the figures were five out of sixty-seven, and the same state of things was shown in 1889. The majority of these bills were of a character that could have originated in the senate with a regard to the public interests and the expedition and convenience of the business of the two houses. From time to time the senate makes amendments that show how thoroughly its members understand and are competent to consider certain subjects; and the sometimes hasty legislation of the commons—hasty because that body is too often overweighted with business—is corrected greatly to the advantage of the country. This fact alone should lead to a reform in the direction indicated.

It is in the commons house that political power rests. As I have already shown, it has both legislative and executive functions, since through a committee of its own it governs the country. Like its great English prototype it represents the people, and gives full expression to the opinions of all classes and interests, to a greater degree indeed than in England itself, since it is elected on a franchise much more liberal and comprehensive. At the present time the Canadian house of commons contains two hundred and fifteen members, or about one member for every twenty thousand persons. The representation is rearranged every decennial census by act of parliament in accordance with the terms of the constitutional law. The French Canadian province has a fixed number of sixty-five members which forms the ratio of representation on which[1] a decennial

[1] At the last census the population of Canada was given as 4,382,810 persons; it is now about 5,000,000.

readjustment is based. Each of the other provinces is assigned such a number as will leave the same proportion to the number of its population as the number sixty-five bears to the population of Quebec when ascertained by a census.[1] The great province of Ontario, with two millions of people, is now represented by ninety-two members, or fifty-eight more members than the state of New York, with over five millions of souls, has in the house of representatives.[2] Quebec has, as just

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[1] B. N. A. Act, 1867.

(*The House of Commons.*)

[2] Sec. 37. The house of commons shall, subject to the provisions of this act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia and fifteen for New Brunswick.

38. The governor-general shall from time to time, in the queen's name, by instrument under the great seal of Canada, summon and call together the house of commons.

39. A senator shall not be capable of being elected or of sitting or voting as a member of the house of commons.

(Sections 40–43 refer to electoral divisions and make temporary provisions for elections.)

44. The house of commons, on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be speaker.

45. In case of a vacancy happening in the office of speaker, by death, resignation or otherwise, the house of commons shall, with all practicable speed, proceed to elect another of its members to be speaker.

46. The speaker shall preside at all meetings of the house of commons.

47. Until the parliament of Canada otherwise provides, in case of the absence, for any reason, of the speaker from the chair of the house of commons for a period of forty-eight consecutive hours, the house may elect another of its members to act as speaker, and the member so elected shall, during the continuance of such absence of the speaker, have and execute all the powers, privileges and duties of speaker.

48. The presence of at least twenty members of the house of commons shall be necessary to constitute a meeting of the house for the exercise of its powers; and for that purpose the speaker shall be reckoned as a member.

49. Questions arising in the house of commons shall be decided by a majority of the voices other than that of the speaker, and when the voices are equal, but not otherwise, the speaker shall have a vote.

stated, sixty-five; the maritime provinces, forty-three; and the remaining members are distributed in Manitoba, British Columbia and the territories. Previous to 1885 the franchise for the several provincial legislatures was the franchise for the house of commons; but in that year an electoral franchise act was passed by parliament for the whole dominion. It was contended, after the most protracted debate that has taken place for years in Canada on any one question, that this radical change was not justified by any public necessity, and was simply entailing an enormous expense on the treasury without returning any corresponding advantage to the country. It may be argued with truth that generally in a federal system it

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50. Every house of commons shall continue for five years from the day of the return of the writs for choosing the house (subject to be sooner dissolved by the governor-general), and no longer.

51. On the completion of the census in the year one thousand eight hundred and seventy-one and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority, in such a manner, and from such time as the parliament of Canada from time to time provides, subject and according to the following rules:—

(1.) Quebec shall have the fixed number of sixty-five members:

(2.) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained):

(3.) In the computation of the number of members for a province a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number:

(4.) On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards:

(5.) Such readjustment shall not take effect until the termination of the then existing parliament.

52. The number of members of the house of commons may be from time to time increased by the parliament of Canada, provided the proportionate representation of the provinces prescribed by this act is not thereby disturbed.

is desirable to use whenever practicable all the institutions of the local government in order to bring the centre and its members into as perfect harmony as possible with one another. This is the practice in the United States, where congress is elected on the franchises of the several states—a system which has been found in every way satisfactory. However, these and other arguments against the change were considered by the majority in parliament as insufficient compared with the belief that they entertained that it was expedient to have the dominion parliament perfectly independent of provincial control. The franchise, though somewhat complicated in its details, is so broad as practically to be on the very border of universal suffrage. Every intelligent, industrious man, who is a British subject by birth or naturalization and not a convict or insane or otherwise disqualified by law, is now in a position to qualify himself to vote for a member for the commons; even the Indians in the old provinces can also avail themselves of the same privilege if they come within the liberal conditions of the act. Members of the house, as well as of the senate, receive a sessional indemnity of $1,000 in case the session extends beyond thirty days, and an allowance of ten cents a mile for travelling expenses.[1] No property qualification is now demanded from a member of the commons nor is he limited to a residence in the district for which he is elected, as is the case in the United States by law or usage; and should he not be able to obtain a seat in the locality or even in the province where he lives he can be returned for any constituency in the dominion. This is the British principle which tends to elevate the representation in the commons; for while as a rule members are generally elected for their own district, yet occasions may arise when the country would for some time lose the

[1] In the colony of Victoria, Australia, where salaries are much higher than in Canada, members of the assembly receive $1,500 a session, and after seven years' service passes over railways.

services of its most distinguished statesmen,[1] should the American rule prevail. The senators in Quebec, in view of the exceptional position of that province, must reside in their own divisions or have their property qualification therein; but while the constitutional law requires that in the case of the other provinces senators must reside within the provincial limits, yet there is no legal necessity that they should live in a particular county or district. In a country like this, with many legislative bodies, demanding the highest capacity, it would be unfortunate were there such limitations in existence as it is admitted tend in the United States to prevent the employment of the highest talent in the public service.[2]

The house of commons may be regarded as fairly representative of all classes and interests. The bar predominates, as is generally the case in the legislatures of this continent; but the medical profession, journalism, mercantile and agricultural pursuits contribute their quota. It is an interesting fact that a large proportion of members have been educated in the universities and colleges of the provinces, and this is especially true of the representatives from French Canada where there are a number of seminaries or colleges which very much resemble the collegiate institutes of Ontario, or the high schools of the United States, where a superior education, only inferior to that of the universities, is given to the youth of the country. Another matter worthy of mention is the fact that a good proportion of the house has served an apprenticeship in the municipal institutions of Ontario—not a few of the leading men having been wardens, reeves, or mayors.

Of the sixty-five representatives from Quebec, there are fourteen English-speaking members, chiefly from the cities and the eastern townships where a British population is still in

[1] For instance, the present premier (Sir John Macdonald) when he lost his seat in Kingston, Ontario, in 1878, was immediately returned for a constituency in Manitoba, and subsequently for a seat in British Columbia.

[2] See Professor Bryce's comments on this point in the American Commonwealth, I., p. 258.

the majority. In Ontario, moreover, two of the constituencies on the border line return two members to represent the French population that is now living in those districts. To this number we must add another representative from the largely French half-breed constituency of Provencher in Manitoba.

As a matter of fact, the house of commons comprises many of the ablest men of the country trained in law and politics. In this respect it must be compared rather with the senate than with the house of representatives at Washington. Rich merchants and bankers do not as a rule seek seats on its benches, but still all classes of business find their representatives within its walls. The man who can win success and influence in the house has many objects of ambition to reward him, though he must necessarily sacrifice the many opportunities for acquiring large wealth that offer themselves to those who keep aloof from active politics. The executive has many prizes in its gift in the shape of lieutenant-governorships, judgeships, collectorships, postmasterships, and many places in the public service which do not fall within the provisions of the civil service act. Thirteen or more positions in the privy council are in view of an ambitious politician. Then there is always the senate as a place of dignity when other plans fail of achievement. The cabinet controls the public expenditures, and it is all-important to an aspiring politician to have as much money as possible spent in his constituency. All these influences help to strengthen the executive under a rigid system of party government. Party lines are very closely drawn in Canada, and the occasions are very rare and exceptional when men can afford to break loose from the trammels that bind them to a certain political body or set of opinions. In these days a strong executive can exercise a powerful control over its supporters in a legislature, perhaps more so than in England where there always exists an independent sentiment which shows itself at important crises in and out of parliament. The danger now-a-days arises not from the encroach-

ment of the royal prerogative, but from the power of the responsible executive which, nominally dependent on the legislature, can, through the influences of party government and individual ambition, make itself the master for the time being as long as it has a strong majority in parliament. The caucus[1] is an instrument that may be and is used to strengthen a party. The strongest ministry does not pretend to deal with important questions during a session without seeking the advice of all its supporters in parliament from time to time. The caucus is a place for strong speaking at crises of political excitement, but, with careful management, party considerations, as a rule, prevail, and occasions seldom arise when it breaks up without an understanding to support the "party" at all hazards. Dissolution is a weapon which an executive can always threaten to unsheathe, and recalcitrant followers may prefer that it should remain as long as possible in the scabbard. It is better perhaps for the public interest that the government should be strong than that it should be weak; for in the former case it can spare defections, and can afford to be determined in a political crisis. It is a misfortune, when, as in France, there are numerous political cliques and sections, incessantly warring against each other and preventing the establishment of stable administrations.

The laws enacted for the preservation of the independence of parliament and the prevention of corrupt practices at elections, are in principle and details practically those in operation in the mother country. The former law derives its origin from the statute of Queen Anne[2] which established the valuable principle that the acceptance by a member of the house

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[1] Both government and opposition hold such a caucus when necessary. We have not yet reached the perfection of the political system of primaries, conventions and caucuses in the United States; but conventions are now generally held in the different electoral districts to nominate candidates for the legislature, and there is a thorough organization of the two parties previous to a general election.

[2] 6 Anne, c. 7, secs. 25, 26.

of commons of an office of emolument from the crown, shall thereby vacate his seat. Members of the house when called to the government as heads of departments must at once resign their seats and be reelected, though an exchange of offices can take place between ministers after their election under the conditions laid down in the law. All officers of the public service and contractors with the government are forbidden to sit in parliament—an exception being made, as in England, of officers in the military service. Since 1874 the house has given up its jurisdiction over the trial of controverted elections, which previously had been considered by committees exposed to all the insidious influences of purely political bodies. The courts in the several provinces are now the tribunals for the trial of all such contested elections; and the results have so far in Canada, as in the parent state, been decidedly in the public interests. The laws for the prevention of bribery and corruption are exceedingly strict; and members are constantly unseated for the most trivial breaches of the law, committed by their agents through ignorance or carelessness. The expenses of candidates must be published by their legal agents after the election. The whole intent of the law is to make elections as economical as possible, and diminish corruption. A candidate may be disqualified from sitting in the commons, or voting, or holding any office in the gift of the crown for seven years, when he is proved personally guilty of bribery, and the voters in a constituency may be also severely punished by fine and imprisonment when corruption is proved against them. Yet while these grievous offences against an honest expression of public opinion are prosecuted and punished so severely, it would be too much to say that all elections are run any more in Canada than in England without a heavy drain at times on the purse of a rich candidate or on the contributions of a political party. It is safe to say, however, that our system is a vast improvement on that of the United States, and purity of elections is largely promoted compared with the state of things in old times.

The methods of business which the houses follow are well calculated to promote the efficiency of legislation and secure the satisfactory administration of public affairs. Their rules and usages are, in all essential particulars, derived from those of the English parliament, and there has been no attempt made to adopt the special rules and practice of congress in any respect. On the day parliament has been summoned by the crown to meet, the governor-general, either in person or by deputy, proceeds to the upper chamber and there seated on the throne, surrounded by a brilliant staff and the high officers of state, reads in the two languages the speech, in which his government sets forth the principal measures which they purpose to present during the session. This speech, which is a very concise and short document compared with the elaborate message of the president, is considered as soon as possible in the two houses and generally passes without opposition or amendment, since it is the modern practice to frame it in terms that will not evoke political antagonism, though of course occasions may arise when a different course will be pursued in order to test the opinion of the house on a particular policy of the administration. As soon as the formal answer to the address has been passed, the houses proceed to appoint the committees, and commence the regular business of the session. The proceedings commence every day with prayers, taken from the church of England liturgy, and are read by the speaker, alternately in English and French, in the commons, and by a paid chaplain in the senate. The rules of the two houses do not vary much with respect to the conduct of business, but more latitude is generally given to members in asking questions and in other proceedings in the senate than in the commons, where there is greater necessity for economizing time. As it is in the popular house that nearly all the business of importance is transacted I shall confine myself to such a brief review of its rules and proceedings as may be interesting and useful to a student of our legislative system.

While the committees are an important part of the legislative machinery of the Canadian parliament, still they do not occupy the place they have reached in congressional government. They are few in number, only ten, exclusive of some small committees generally appointed to consider special questions in the course of a session. The important bodies are these: The committee of public accounts, in which financial inquiries are made, and particular expenditures of the government reviewed whenever explanation or investigation is deemed to be necessary; the committee of agriculture and colonization, in which matters affecting those subjects are fully considered; the committee of privileges and elections, which explains itself; and four committees to which all private bills respecting banking and commerce, navigation and shipping, railways and canals, telephone and telegraph lines, bridges, insurance and the incorporation of companies for other purposes, are referred for full consideration. There are also two committees on which members from the two houses sit to consider the printing of documents and the library, which are matters of common interest and management. The committees vary in number from twenty-six to one hundred and sixty members. The most numerous is the railway committee which has one hundred and sixty-four members; agriculture and colonization, one hundred and eight; banking and commerce, one hundred and four; miscellaneous private bills, seventy-five. They resemble, therefore, in this respect the grand committees of the English house of commons rather than the small bodies into which congress is divided—by the speaker in the house of representatives and by ballot in the senate.[1] Canadian committees are appointed by a committee of selection on which the government has of course a majority; and both sides of the house are fully represented. The speaker

[1] In the house of representatives there were in 1884 fifty-four standing committees; in the senate forty-one. Sixteen is the highest number on a committee in the former, eleven in the latter house.

has no concern whatever in this important matter and acts only as the presiding officer of the assembly, bound to maintain the rules and usages of parliament and to exercise the functions of his high office irrespective of all political considerations whatsoever. He is elected by the majority at the opening of a new parliament and holds his office until it is dissolved or he resigns. His functions are those of the speaker in the English commons, and in no way does he perform the political duties of the speaker of the house of representatives, who is now practically the legislative chief of the party.[1]

All bills must go through several stages in both houses before they can receive the assent of the governor-general and become law. The second reading is the stage when the principle of the measure should be properly considered, and it is only in committee of the whole that its clauses can be regularly discussed. All bills are considered in committee of the whole; but private bills are first sifted in one of the standing committees just mentioned, and if reported favorably they come again before the house for further examination. I may as well explain here the distinction between the two classes of bills. All measures involving questions of public interest—the criminal law, customs, post office, militia and other matters within the general powers of parliament—are styled public bills. These bills are generally brought in directly on motion by the member in charge, or on a resolution in committee of the whole whenever a public burden is imposed, on the principle that the house should have as long a time as possible to consider matters of revenue and expenditure. As the government is practically responsible for all important measures of public policy, the great bulk of public legislation is prepared and presented by them; but it is competent for any one to introduce any bill he wishes, provided it does not impose taxes or appropriate public moneys, which are questions con-

[1] Congressional Government, by Woodrow Wilson, p. 108.

stitutionally within the purview of the executive alone. The order of business, laid daily on the desk of every member, is divided into government orders, public bills and orders, and private bills, besides questions put to the government, and notices of motions, all of which are taken up on particular days in accordance with the rules of the house. If a member has a bill of importance on the paper, the government will give him every assistance in passing it before the house is prorogued and even will take charge of it themselves should it be expedient. Certain days are set apart for the government business and for private members; but near the close of the session the administration control all the time, since theirs is the all-important legislation. The private bills, which always outnumber the public and government measures, are presented and passed in conformity with special rules which do not apply to the other classes. Any persons who desire the incorporation of a banking, insurance, railway, or other company, or to construct a bridge, wharf or other work, must give notice in certain journals of their intention, and then come before parliament by petition. This petition must be immediately considered by a standing committee to see if it is in accordance with the published notice and the standing orders of the house; and then, if the report is favorable, the bill is presented, read a second time, and referred to one of the committees to which it should properly go. Its consideration in that committee is the most important stage to which it is submitted; for its promoters must now show that there is no objection to its passage, and it is the duty of the committee to see that it inflicts no injury and is in conformity with the public interests. If there is opposition to the bill, full opportunity is given by the rules to the contestants to appear and set forth their case. The house, through committees of this sort, acts in a *quasi* judicial capacity. Members of the government sit on such committees and pay particular attention to all the details of legislation of this class. It will consequently be seen that the administration becomes practically responsible for the charac-

ter of all the legislation that passes parliament. The average number of measures that pass the two houses every session is one hundred and ten, of which three-fourths at least are of a private nature. The total number of bills presented as a rule during the session does not exceed one hundred and thirty, and it is therefore evident that very few desirable measures fail to become law. The fact that on the average seven thousand bills are brought every year into congress, of which not more than one thirtieth[1] ever becomes law, stands out in striking contrast with the limited amount of legislation in the Canadian parliament. In both countries there are legislatures to relieve the central authority of a great number of bills which otherwise would come before it. The difference between Canada and the United States with respect to population and wealth does not by any means explain this difference in point of legislation. In all probability the reason must be sought in the fact that in the Canadian, as in the British parliament, there is an administration which is immediately responsible for all important matters of public policy, and always bound to give a vigilant scrutiny to every measure that comes before the house.

The principal duty of parliament is very truly considered to be the voting of supply. From early times in English history the kings were obliged to resort to the nation and ask them to provide the money necessary to meet their financial necessities. One of the most famous statutes in England is that of 1297, which followed the great charter wrung from John at Runnymede, and declares that no tallage shall be taken without the good will and assent of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. Since that day, parliament has had the power of taxation. The three estates originally voted supply separately, but in the course of time the right of initiating all taxation and voting money rested with the people's representatives. In

[1] Professor Bryce in the American Commonwealth, I., 181, 182.

Canada, as I have already shown in the second lecture, the commons houses in the various provinces, from the very commencement of legislative institutions, asserted their claims to full control over the public grants. Now for many years the rules and usages that have so long obtained in England with respect to money votes and taxes prevail in Canada and govern the relations between the two houses. The crown, with the advice of the council, recommends all appropriations of public money.[1] All measures of taxation can only be introduced by ministers of the crown and must be shown necessary for the public service. Appropriations and taxes are invariably first voted in committee of the whole in the shape of resolutions which, when agreed to at a subsequent stage of the house, are incorporated into bills. Permanent grants, such as ministers' or judges' salaries, are passed in this way in ordinary committees of the whole. All sums of money, however, for the service of the year, are voted every session in committee of supply, when the estimates, giving all the votes in detail, are formally laid before the house by message from the governor-general. These estimates contain several hundred votes arranged in the order of the various public services. For instance,—civil government, militia, penitentiaries, administration of justice, immigration, Indians, public works, railways and canals, quarantine and the numerous other subjects for which parliament votes annually large sums of the public money. These estimates contain the expenditures for the current and the previous year in parallel columns, for purposes of comparison, and it is the duty of the minister responsible for a particular

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[1] B. N. A. Act, 1867, sec. 53. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the house of commons.

54. It shall not be lawful for the house of commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that house by message of the governor-general in the session in which such vote, resolution, address, or bill is proposed.

expenditure to give full explanations on the subject when they are demanded by the house. As every vote is carefully scanned a very considerable part of the session is occupied by debates on this important committee, over which a permanent chairman, who is also the deputy speaker, presides. When all the votes are passed in committee, then they are reported to the house, and a further opportunity given for debate, though members are permitted to speak only once at this stage. Resolutions are next passed in committee of ways and means to authorize the necessary payments out of the consolidated fund, and finally the appropriation bill, containing all the votes of supply in full, is introduced and passed through all its stages. The committee of supply votes the money, and the committee of ways and means provides the means of payment. It is in the latter committee all taxes are imposed for purposes of public revenue.

When the estimates have been brought in it is the duty of the finance minister to make his financial statement, or, in parliamentary phrase, present the "budget."[1] He will on this occasion review the expenditure of the past, and estimate that for the following year, give his opinion on the financial situation and lay before the house a statement of any scheme of taxation that the government may have decided on, or of any changes that may be deemed necessary in the existing tariff. One of the most important and interesting debates of the session generally takes place after the delivery of this speech.

From the beginning of the session, members ask questions of the government on every imaginable public topic, and make formal motions for papers relating to matters of general or local interest. All such motions and inquiries are made after two days' notice; for the rules are very properly framed so as to prevent surprises, and give the house due information of the business to come daily before it. But in the Canadian house,

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[1] From the old French word *bougette*, a bag. In making this statement, the minister *opens* the money bag of the people, figuratively speaking.

and in the English commons in a more limited sense under the new regulations adopted since "obstruction" showed its objectionable features, there are certain methods which enable members to move motions or ask questions without number, and even without notice in the Canadian commons. It is always open to a member to bring up an important question immediately—except, of course, when there is a subject under consideration—and debate it at any length on a motion for the adjournment of the house. Then, as soon as committee of supply is moved on any day, a member may make a motion on any question he wishes, unless it refers to the votes to be discussed in supply. As the rules do not permit any amendment to be made to a motion at such a stage, "the previous question," in the English parliamentary sense, is practically in force and it is possible to get a direct vote on an issue, without the evasions that amendments offer on other occasions. While in the case of all bills and other motions, amendments must be relevant to the question, members can here bring up any subject they please. This is a practice which has its historical origin in the fact that in old times, when the English parliamentary system was developing itself, the people's representatives laid down the principle that the king must redress their grievances before they should grant him the supply he asked from the nation. Those times have long since passed away and the people now fully control all taxes and expenditures, but the crown still asks for money through the council, and the commons grant it in due form. It is no longer necessary to threaten the crown with a refusal of supplies unless the people's grievances are redressed; but still they can refuse it to an unfaithful government should the necessity arise. As a matter of fact, should the government be defeated in a session before supply is voted, the house would pass only such votes as are necessary to meet the exigencies of the public service, and leave the whole question of supply open until the crisis is over and there is in office a ministry which has the confidence of the house and country. The privilege of obtaining an

expression of opinion on any question of interest, and of setting forth any public grievance is one which is often used in the Canadian house, though it has never been abused as in England. The practice of not giving the government and house notice of such motions, as in England, is objectionable, and that is practically admitted by the fact that it is now generally considered courteous to inform the ministry privately of the subject before it is formally proposed. It would, however, be clearly to the public advantage were the rules to require that the whole house should always have before it the text or at least the substance of a motion so that it may be discussed as intelligently as possible.

The houses have never been compelled by obstruction, as in England, to adopt rules for the closure of a debate, nor do they limit the length of speeches on any occasion. "The previous question" does not cut off a discussion, as in the United States, but in accordance with the old English practice, only prevents amendment to a question. The debate continues on the main question, until a vote is taken and it is decided whether it shall be put or not. If the house decide that the question be not put, then the main motion disappears from the order paper and the debate cannot continue; but if the house decide that the question be put, then the debate must cease and the vote be taken immediately. The debates of the house are conducted, as a rule, with decorum, and the occasions are relatively few when the speaker is obliged to call a member to order for the use of improper language. Many years have passed since a member has been "named" and censured by the house for unparliamentary expressions or conduct. Expulsion or suspension is unknown to these later days of Canadian parliamentary history, though cases of expelling a member just as unjustifiable as that of Wilkes can be found in the legislative annals of French Canada and Upper Canada, from 1800 to 1836. Even when party strife runs high and the debate goes on for weeks, the house shows great power of self-restraint. On the occasion of the discussion in 1885 of the dominion

electoral franchise bill, to which the opposition took very strong objection, the house had a sitting which lasted over fifty hours; but there was no exhibition of ill temper or passion, and the two contending parties simply made a great physical effort to tire each other out. The speeches on important occasions, however, are sometimes unnecessarily long; for it is not unusual for a member to take up three hours before he closes. Debates are in such cases prolonged for days and the house becomes too often the theatre for the utterance of elaborate essays instead of that incisive discussion which is best adapted to a deliberative assembly. Sometimes the house rises to the "height of a great argument" and the debate is confined closely to the subject, and to a few leading men on either side. The fact is that in the majority of cases, men speak to their constituents rather than to the house, through the medium of the official reports which are very full and give facilities for members to distribute their speeches *ad libitum* in their electoral districts. The house, however, in the ordinary proceedings and in committee of the whole, and in select committees, shows a very practical capacity for business, and in this way affords some compensation for the wordiness that too often distinguishes its debates. The opportunities for oratorical displays are few, but at times there are speeches worthy of any legislative assembly in English speaking countries, and illustrative of the high intellectual standard of some of its members. Some of the French members speak English with remarkable accuracy, and it is but rarely now that any other language is heard in important debates, since the minority feel themselves compelled to speak so as to be understood by the great majority of which the house is composed. All the motions, however, are read and all the proceedings printed, in the two languages, in accordance with the British North America Act and the rules of the two houses.[1]

[1] B. N. A. Act, sec. 133. Either the English or the French language may be used by any person in the debates of the houses of the parliament of

In case of a division on a question, the motion is formally put by the speaker, and he calls for the "yeas" and "nays." If he cannot decide from the voices, and five members call for the names, those in favor of the question first stand up and the name of each member is called without reference to alphabetical order by the assistant clerk and recorded by the clerk on a roll before him. Then the same procedure is repeated in the case of the opposite side, and as soon as the clerk has counted up and announced the numbers, the speaker declares the motion carried or negatived as the case may be. The names are invariably recorded in alphabetical order in the journals. The whole process is very simple, and takes only about twenty minutes from the time the members are "called in" and the vote declared.

In concluding this lecture, I may briefly refer to the position of that large body of permanent officials generally known as the civil service of Canada, whose services are so valuable and indispensable to the good government of the country at large. Except in some of the smaller provinces—in Nova Scotia, for instance, until recently—there has been for half a century and more in Canada, always a general recognition of the important principle that the public servants should be irremovable except for sufficient cause, and that they should continue in office without respect to changes of political administrations. In the days previous to responsible government, this class was appointed by the governors, but since the days of Lord Metcalfe, the third governor-general of Canada after the union of 1841, who attempted in some memorable cases to ignore the advice of his ministers, judges and all public officials have been inva-

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Canada and of the houses of the legislature of Quebec; and both those languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this act, and in or from all or any of the courts of Quebec.

The acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both those languages.

riably appointed on the recommendation of the administration. There is now a law[1] providing for examinations for admission to and promotions in all the important departments of the public service. It is still a moot question in Canada, as in England, whether in all cases—especially in promotions—success in answering the questions of examiners is invariably the best test of a candidate's capacity for filling certain public positions—whether sometimes it does not merely illustrate an ability to "cram." Experience in an office, in the opinion of men qualified to speak of such a subject, can most frequently prove the competency of an individual for the ordinary routine duties that the majority of public officials have to fill. Be that as it may, the educational test has at least the advantage of keeping out of the public service many undesirable men who, without some such test, would be pushed into the departments for mere political reasons. The civil service act has relieved the government to a very considerable degree of a political pressure which had seriously interfered with the efficient organization and working of the departments. Besides the minor officials appointed in accordance with the provisions of the law, there are a large number of important offices, like collectors of customs, postmasters, deputy or permanent heads of departments, which are still given as rewards for political service. The moment, however, these men are appointed and show themselves capable in the discharge of their duties, they become the servants of the people at large, and not of a particular party or administration. Recognizing their obligations in this respect, the public officials of the dominion generally keep aloof from party conflict and intrigue and confine themselves to the legitimate functions devolving upon them. When they have attained a certain age, and become incapacitated for performing their duties, they are allowed a fair superannuation

[1] See Can. Rev. Stat., c. 17 (as amended by 51 V., c. 12), which regulates the salaries paid to deputy ministers and clerks according to their grade.

allowance,[1] in accordance with the conditions laid down in the law. In certain political emergencies there may be sometimes an inclination to use the superannuation provisions to create a vacancy to reward a follower of some political party; but such cases are natural temptations inseparable from a system of popular government. On the whole, this superannuation allowance is an inducement to men to enter and continue in the public service, and is justified by the experience of the parent state. So much depends on the efficiency of the permanent public service in a country like Canada, where governments and ministers are constantly changing, that it seems expedient to offer every possible incentive to the best class of men to give up the greater ambitions and prizes of life, and devote their services to the government. Whatever defects may still exist in the rules and practices that regulate the public service, it is not too much to say that the permanent officials of Canada are, in general, an industrious and efficient class, in every way reflecting credit on our system of government.

[1] See Can. Rev. Stat., c. 18.

LECTURE IV.

THE PROVINCIAL GOVERNMENTS AND LEGISLATURES.

The Provinces are so many political entities, enjoying extensive powers of local government and forming parts of a Dominion whose government possesses certain national attributes essential to the security, successful working, and permanence of the federal union, established by the British North America Act of 1867, which defines the respective jurisdictions of the federal organization and its members. These provinces vary just as do the American States in population and area. Ontario may be compared to Ohio, and Prince Edward Island to Rhode Island. British Columbia has the area of an empire, but as yet its whole population is the smallest of all the provinces. Previous to the confederation, all the provinces, except Manitoba, which was formed in 1870 out of the Northwest Territories, had a complete organization of government and legislature. The political history of Ontario and Quebec has, for convenience sake and on account of their having written constitutions since 1774, been briefly reviewed in a former lecture, and it is, therefore, only necessary to refer here to that of the smaller provinces. Nova Scotia, New Brunswick and Prince Edward Island were formerly portions of the French domain in America; but they were formally ceded to England by the treaty of Utrecht in 1714, and the treaty of Paris in 1763. There are still in certain districts a small population descended from the old French, who once tilled the fertile lands of Acadie, that ill-defined region, which comprised not only Nova Scotia and New Brunswick,

but a considerable part of the State of Maine, according to the contentions of French statesmen. None of these provinces were ever given written constitutions by the parliament of Great Britain, as we have seen was the case with old Canada; but to all intents and purposes they enjoyed, previous to 1867, as complete a system of self-government as that large province. Their constitutions must be sought in the commissions of the lieutenant-governors, despatches of the colonial secretary of state, imperial statutes, and various official documents, granting in the course of time a legislative system and responsible government.

At the time of the outbreaks in Upper and Lower Canada in 1837–8, there was still a considerable amount of dissatisfaction in the Maritime Provinces, arising from the existence of an irresponsible executive, the constant interference of the imperial government in colonial matters, and the abuse of the powers of the representative and executive bodies; but "if there was in those sections less formidable discontent and less obstruction to the regular course of government, it was because in them there was a considerable departure from the ordinary course of the colonial government, and a nearer approach to sound constitutional practice." In New Brunswick especially, "the political controversies that had been extremely bitter between the executive and legislative authorities were, to a great extent, terminated by the concession of all the revenues to the assembly."[1] In Prince Edward Island the political situation was aggravated by the fatal mistake, made at the very commencement of its history, of handing over all the lands to a few absentee landlords, a burning question that was not satisfactorily settled until after the island had become part of the confederation.

At the time of the confederation all the provinces enjoyed parliamentary government in as complete a sense as Canada itself, responsible government having been given to Nova

[1] Lord Durham's Report, pp. 62, 63.

Scotia and New Brunswick in 1848, and to Prince Edward Island three years later. In each province there was a lieutenant-governor appointed by the crown directly, an executive responsible to the legislature, which was composed of two houses, an assembly elected by the people and a legislative council appointed by the crown, except in Prince Edward Island, where then, as now, it was elective.

It was therefore only necessary to enact in the constitution that the two provinces of Nova Scotia and New Brunswick should have the same territorial limits, and that their constitutions should remain as at the time of the union, until altered under the authority of the act. In the case, however, of Canada, it was necessary to divide it, since one of the principal objects of the federal union was to get rid of the political difficulties that had so long complicated government in Canada and separated French Canada from the western section. Consequently Canada was divided into two separate provinces as before the union of 1841, with the respective names of Quebec and Ontario, instead of Lower Canada and Upper Canada.[1] In

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[1] B. N. A. Act, 1867, sec. 5. Canada shall be divided into four provinces, named Ontario, Quebec, Nova Scotia and New Brunswick.

6. The parts of the province of Canada (as it exists at the passing of this act) which formerly constituted respectively the provinces of Upper Canada and Lower Canada, shall be deemed to be severed and shall form two separate provinces. The part which formerly constituted the province of Upper Canada shall constitute the province of Ontario; and the part which formerly constituted the province of Lower Canada shall constitute the province of Quebec.

7. The provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this act.

An imperial statute passed since 1867 (B. N. A. Act, 1871) provides:

3. The parliament of Canada may from time to time, with the consent of the legislature of any province of the said dominion, increase, diminish, or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by the said legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution, or alteration of territory in relation to any province affected thereby.

view of this division, it became necessary to make special provisions for Ontario and Quebec in accordance with an address adopted in the Canadian legislature. The representatives of Upper Canada wished to have only one house, a legislative assembly, while those of Lower Canada preferred the more British and indeed the more American system of two houses. It has been urged by an eminent judge that the British North America Act carried out confederation "by first consolidating the four original provinces into one body politic, the Dominion, and then redistributing this Dominion into four provinces."[1] In other words the provinces were newly created by the act of union. But by no reasoning from the structure of the act, can this contention, which makes the provinces the mere creations of the statutes, and practically leaves them only such powers as are specially stated in the act, be justified. If it was so, there must have been for an instant a legislative union and a wiping out of all old powers and functions of the provincial organizations and then a redivision into four provinces with only such powers as are directly provided in the act.

The weight of authority now clearly rests with those who have always contended that in entering into the federal compact the provinces never intended to renounce their distinct and separate existence as provinces, when they became part of the confederation. This separate existence was expressly reserved for all that concerns their internal government; and in forming themselves into a federal association under political and legislative aspects, they formed a central government for inter-provincial objects only. Far from the federal authority having created the provincial powers, it is from these provincial powers that there has arisen the federal government to which the provinces ceded a portion of their rights, property and revenues.[2]

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[1] Mr. Justice Strong, St. Catharine's Milling Company *vs.* The Queen. Sup. Court R., Vol. 13, p. 605.

[2] An eminent constitutional lawyer, Hon. Edward Blake, has taken issue with the learned judge in the course of an exceedingly able argument he

The constitutions of the four provinces, which composed the dominion in 1867, are the same in principle and in details, except in the case of Ontario, where there is, as I have already shown, only a legislative assembly. The same may be said of the other provinces that have been brought into the union since 1867. All the provisions of the British North America Act that applied to the original provinces were, as far as possible, made applicable to the provinces of British Columbia,

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made before the judicial committee of privy council, in the case of the Queen and the St. Catharine's Milling Company, and I cannot do better than quote his exact words, which seem clearly to indicate the real character of the union: "What then was the general scheme of that act? First of all, as I have suggested, it was to create a *federal* as distinguished from a *legislative* union, a union composed of several existing and continued entities. It was not the intention of parliament to mutilate, confound and destroy the provinces mentioned in the preamble, and having done so, from their mangled remains, stewed in some legislative caldron, evoke by some legislative incantation, absolutely new provinces into an absolutely new existence. It was rather, I submit, the design and object of the act, so far as consistent with the re-division of the then province of United Canada into its old political parts, Upper and Lower Canada, and with the federal union of the four entities, Nova Scotia, New Brunswick and the reconstituted parts of old Canada, Ontario and Quebec; it was the design, I say, so far as was consistent with those objects, by gentle and considerate treatment to preserve the vital breath and continue the political existence of the old provinces. However this may be, they were being made, as has been well said, not fractions of a unit but units of a multiple. The Dominion is a multiple, and each province is a unit of that multiple, and I submit that undue stress has been laid, in the judgment of one of the learned judges below, upon the form which is said to have been adopted, of first uniting and then dividing the provinces. I submit that the motive and cause of that form was the very circumstance to which I have adverted, the necessity of the redivision of old Canada. Three provinces there were, 'four' there were to be; and the emphatic word in that clause is the word 'four.' But for the special circumstance of the redivision of old Canada, there would have been no such phrase. Again, consistently with and supporting the suggested scheme of the act, there is to be found important language with reference to the provincial institutions and rights of property which are spoken of as continued and retained, words entirely repugnant to the notion of a division and a fresh creation." See argument published in pamphlet form, Toronto, 1888.

Manitoba and Prince Edward Island, just as if they had formed part of the union in 1867.

Manitoba was given a constitution similar to that of the older provinces by an act of Canadian parliament, and it was expressly provided in the terms of union with British Columbia that the government of the dominion would consent to the introduction of responsible government into that province and that the constitution of the legislature should be amended by making a majority of its members elective.[1] Immediately after the union these reforms were carried out, and the province was placed on the same footing as all the other provinces. Consequently the local or provincial constitutions are now practically on an equality, so far as the executive, legislative and all essential powers of self-government are concerned; and all of them have the authority under the fundamental law to amend their constitutions, except as regards the office of lieutenant-governor.[2] British Columbia and Manitoba accordingly availed themselves of their constitutional privileges, and there is now only one house, a legislative assembly, elected by the people in those provinces.

In all the provinces, at the present time, there is a very complete system of local self-government, administered under the authority of the British North America Act, and by means of the following machinery:

A lieutenant-governor appointed by the governor-general in council;

An executive or advisory council, responsible to the legislature;

A legislature, consisting of an elective house in all cases, with the addition of an upper chamber appointed by the crown in three provinces, and elected by the people, in one;

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[1] For constitutions of provinces admitted since 1867, see for Manitoba, Can. Stat., 33 Vict., c. 3; Man. Stat., 39 Vict., c. 28; Imp. Stat. 34, 35 Vict., c. 28, sec. 6.—British Columbia, Can. Stat. for 1872, p. 34, B. C. Con. Stat., c. 42.—Prince Edward Island, Can. Stat. of 1873, p. 11.

[2] See *supra*, p. 47.

A provincial judiciary, composed of several courts, the judges of whom are appointed and paid by the dominion government;

A civil service, with officers appointed by the provincial government, holding office, as a rule, during pleasure and not removed for political reasons;

A municipal system of mayors, wardens, reeves and councillors, to provide for the purely local requirements of the cities, towns, townships, parishes and counties of every province.

The lieutenant-governor is appointed by the governor-general in council, by whom he can be dismissed for "cause assigned" which, under the constitution must be communicated to parliament.[1] He is therefore an officer of the dominion as well as the head of the executive council and

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[1] B. N. A. Act, 1867, sec. 58. For each province there shall be an officer, styled the lieutenant-governor, appointed by the governor-general in council by instrument under the great seal of Canada.

59. A lieutenant-governor shall hold office during the pleasure of the governor-general; but any lieutenant-governor appointed after the commencement of the first session of the parliament of Canada, shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the senate and to the house of commons within one week thereafter if the parliament is then sitting, and if not then within one week after the commencement of the next session of the parliament.

60. The salaries of the lieutenant-governors shall be fixed and provided by the parliament of Canada.

61. Every lieutenant-governor shall, before assuming the duties of his office, make and subscribe before the governor-general or some person authorized by him, oaths of allegiance and office similar to those taken by the governor-general.

62. The provisions of this act, referring to the lieutenant-governor, extend and apply to the lieutenant-governor for the time being of each province or other, the chief executive officer or administrator for the time being carrying on the government of the province by whatsoever title he is designated.

67. The governor-general in council may, from time to time, appoint an administrator to execute the office and functions of lieutenant-governor during his absence, illness or other inability.

possesses, within his constitutional sphere, all the authority of a lieutenant-governor before 1867. The essential difference now in his position arises from the fact that his responsibility is to the government which appoints him, just as these high officials before the confederation were responsible immediately to the imperial authorities. He acts in accordance with the rules and conventions that govern the relations between the governor-general and his privy council. He appoints his executive council and is guided by their advice so long as they retain the confidence of the legislature. He has "an unquestionable constitutional right to dismiss his ministers, if, from any cause, he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain that impartiality towards rival political parties which is essential to the proper performance of the duties of his office; and for any action he may take he is (under the fifty-ninth section of the British North America Act) directly responsible to the governor-general."[1] But it is quite clear that while the lieutenant-governor can dismiss his ministers, it is a right only to be exercised for a cause fully justified by the practice of sound constitutional government; and he should not for personal or political reasons, be induced to withdraw his confidence from a ministry which has an unequivocal majority in the popular branch, unless indeed there should arise some grave public emergency which would compel him to call upon another set of advisers, and ask them to support him and appeal to the people for their judgment on the question at issue. Doubts have been raised from time to time, though rarely now, compared with the earlier years of the working of our system, whether the lieutenant-governor of a province represents the crown as before the union of 1867, but it is generally admitted that in the discharge of all the executive and administrative functions that devolve constitutionally upon him and require

[1] Despatch of secretary of state for the colonies in Lieutenant-Governor Letellier's case, 1879, Commons Papers 1878–79, c. 2445, pp. 127, 128.

the interposition of the crown in the province, the lieutenant-governor has all the necessary authority.

In various cases that have come before the highest courts in Canada and in England, in which the point has been argued, the weight of authority now goes to sustain the general proposition I have laid down.[1] In one very important argument that was heard before the courts of Canada and finally before the judicial committee of the privy council, the question arose whether it is the provincial or the dominion government that is entitled to the estates of persons dying intestate and without heirs. As every legal student knows, property which has no owner, escheats to the crown, in proper accordance with the maxim of feudal law, and, in our day, that means it becomes the property of the people. One able counsel for the provincial authorities in this case laid special emphasis on the argument that both from the legislative and executive point of view the royal prerogatives, which in England are not the personal appanage of the sovereign, but are the property of the people, and which the sovereign holds in trust to exercise them in the interests of the British nation, are equally exercised in the provinces of the queen, not more, however, to her personal profit than in the mother country, but for the people of the provinces, with respect to whom these prerogatives have not lost their character of a trust, and that, not being able to exercise them herself, she has delegated their exercise to the lieutenant-governors, who are her mandataries.[2] The judicial committee declared by implication that escheated lands in any province went to the provincial and not to the dominion government. Their Lordships dwelt on the clause 109,[3] in the constitutional act of 1867, which enacts that "all lands, mines, minerals and royalties" belong-

[1] See opinion of Chief Justice Ritchie in case of Mercer vs. the attorney-general of Ontario. Sup. Court Rep., Vol. V, pp. 636, 638, 643.

[2] Attorney-general (now judge) Loranger. Sup. Court Rep., Vol. V, p. 608.

[3] See Bourinot's Manual of Constitutional History, pp. 147–151.

ing to the provinces at the time of the union shall continue to belong to those provinces. The real question, in their opinion, was as to the effect of the words, "lands, mines, minerals and royalties" taken together. The mention of "mines" and "minerals" in this context was not enough to deprive the word "royalties" of what otherwise would have been its proper force. The general subject of the whole section is "of a high political nature," it is "the attribution of royal territorial rights, for purposes of revenue and government, to the provinces in which they are situate or arise."[1] This decision in its entirety is properly regarded as decidedly in the direction of strengthening provincial jurisdiction on the point I have been considering.

The executive council, which is the name now given to the administration of each province, a name borrowed from the old provincial systems of government,[2] comprises from seven members to two or three in British Columbia, holding, as a rule, various provincial offices as heads of departments. Their titles vary in some cases, but generally there is in every executive council an attorney-general, a provincial secretary, and a commissioner of lands. In the cabinet of Ontario there is a minister of education, since that branch of the public service is of exceptional importance in that province in view of the great expenditure and large number of common and grammar schools, collegiate institutes, normal and model schools, besides the provincial university in Toronto. All the members of the executive council, who hold departmental and salaried offices, must vacate their seats and be reelected as in the case of the dominion ministry. The principle of ministerial responsibility to the lieutenant-governor and to the legislature is observed in the fullest sense.[3]

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[1] Legal News, Vol. VI, p. 244.

[2] The same name was applied to the old councils of the thirteen colonies.

[3] B. N. A. Act, 1867, sec. 63. The executive council of Ontario and Quebec shall be composed of such persons as the lieutenant-governor from

In my third lecture, I showed the importance of the powers granted by the British North America Act of 1867 to the provincial legislatures, and gave a brief statement of what I believed, from a study of the best authorities, to be the true relations between those bodies and the dominion government. It is, therefore, only necessary for me to consider here some features of the constitution of these legislatures, the election of members, the trial of controverted elections, the prevention of bribery and corruption, and the great variety of subjects that fall within their legislative jurisdiction.

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time to time thinks fit, and in the first instance of the following officers, namely: the attorney-general, the secretary and registrar of the province, the treasurer of the province, the commissioner of crown lands, and the commissioner of agriculture and public works; with, in Quebec, the speaker of the legislative council and the solicitor-general.

64. The constitution of the executive authority in each of the provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this act, continue as it exists at the union until altered under the authority of this act.

65. All powers, authorities, and functions which under any act of the parliament of Great Britain, or of the parliament of the united kingdom of Great Britain and Ireland, or of the legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the union vested in or exercisable by the respective governors or lieutenant-governors of those provinces, with the advice, or with the advice and consent of the respective executive councils thereof, or in conjunction with those councils or with any number of members thereof, or by those governors or lieutenant-governors individually shall, as far as the same are capable of being exercised after the union in relation to the government of Ontario and Quebec, respectively, be vested in and shall or may be exercised by the lieutenant-governor of Ontario and Quebec, respectively, with the advice or with the advice and consent of, or in conjunction with the respective executive councils or any members thereof, or by the lieutenant-governor individually, as the case requires, subject nevertheless (except with respect to such as exists under the acts of the parliament of Great Britain or of the parliament of the united kingdom of Great Britain and Ireland) to be abolished or altered by the respective legislatures of Ontario and Quebec.

66. The provisions of this act referring to the lieutenant-governor in council shall be construed as referring to the lieutenant-governor of the province acting by and with the advice of the executive council thereof.

The legislatures have a duration of four years—in Quebec, of five—unless sooner dissolved by the lieutenant-governor. They are governed by the constitutional principles that obtain at Ottawa. The lieutenant-governor opens and prorogues the assembly, as in Ontario, Manitoba and British Columbia, or the assembly and the legislative council in the other provinces, with the usual formality of a speech. A speaker is elected by the majority in each assembly, or is appointed by the crown in the upper chamber.[1] The rules and usages that govern their proceedings are derived from those of England, and do not differ in any material respect from the procedure in the dominion parliament. The rules with respect to private bill legislation are also equally restrictive. The British North America Act applies to the speakership of the assemblies the provisions that it enacts with respect to the speakership of the commons. The legislatures of Ontario and Quebec, like the dominion parliament, must sit once every twelve months; but apart from the existing usage that supply has to be voted every twelve months, the act demands an annual session. None of the provinces have yet adopted biennial sessions in imitation of the very general practice of the state legislatures. Not

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[1] B. N. A. Act, 1867:

1.—Ontario.

Sec. 69. There shall be a legislature for Ontario, consisting of the lieutenant-governor and of one house styled the legislative assembly of Ontario.

70. The legislative assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two electoral districts set forth in the first schedule to this act.

2.—Quebec.

71. There shall be a legislature for Quebec, consisting of the lieutenant-governor and two houses, styled the legislative council of Quebec, and the legislative assembly of Quebec.

72. The legislative council of Quebec shall be composed of twenty-four members, to be appointed by the lieutenant-governor, in the queen's name, by instrument under the great seal of Quebec, one being appointed to represent each of the twenty-four electoral divisions of Lower Canada in this act referred to, and each holding office for the term of his life, unless the legislature of Quebec otherwise provides, under the provisions of this act.

only does the British practice of voting annual estimates stand in the way of this change, which would require an amendment of the provincial constitutions, but it would be hardly acceptable to an opposition in a legislature, since it would greatly strengthen an administration and lessen their responsibilities to the assembly. In the United States there is no cabinet with seats in the assemblies dependent on the vote of the majority, and biennial sessions have their advantages, but it would be in this country a radical change hardly consistent with the principles of responsible government.

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73. The qualifications of the legislative councillors of Quebec shall be the same as those of the senators for Quebec.

74. The place of a legislative councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of senator becomes vacant.

75. When a vacancy happens in the legislative council of Quebec by resignation, death or otherwise, the lieutenant-governor, in the queen's name, by instrument under the great seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

76. If any question arises respecting the qualification of a legislative councillor of Quebec, or a vacancy, in the legislative council of Quebec, the same shall be heard and determined by the legislative council.

77. The lieutenant-governor may, from time to time, by instrument under the great seal of Quebec, appoint a member of the legislative council of Quebec to be speaker thereof, and may remove him and appoint another in his stead.

78. Until the legislature of Quebec otherwise provides, the presence of at least ten members of the legislative council, including the speaker, shall be necessary to constitute a meeting for the exercise of its powers.

79. Questions arising in the legislative council of Quebec, shall be decided by a majority of voices, and the speaker shall, in all cases, have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

80. The legislative assembly of Quebec shall be composed of sixty-five members to be elected to represent the sixty-five electoral divisions or districts of Lower Canada, in this act referred to, subject to alteration thereof by the legislature of Quebec; provided that it shall not be lawful to present to the lieutenant-governor of Quebec for assent, any bill for altering the limits of any of the electoral divisions or districts mentioned in the second schedule to this act, unless the second and third readings of such bill have been passed in the legislative assembly, with the concurrence of the majority of the members representing all those electoral divisions or districts, and the assent shall not be given to such bill unless an address had been

The number of members varies from ninety-one in the legislature of the most populous province of Ontario to twenty-seven in British Columbia, with the smallest population. Members of the legislative councils, where they exist, have a property qualification, except in Prince Edward Island; but the members of the assemblies need only be citizens of Canada and of the age of twenty-one years. They are elected in Ontario on a franchise which is manhood suffrage, qualified only by residence and citizenship, and the conditions of the suffrage are hardly less liberal in nearly all the provinces, and vary little

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presented by the legislative assembly to the lieutenant-governor stating that it has been so passed.

3.—ONTARIO AND QUEBEC.

81. The legislatures of Ontario and Quebec respectively shall be called together not later than six months after the union.

82. The lieutenant-governor of Ontario and of Quebec shall, from time to time, in the Queen's name, by instrument under the great seal of the province, summon and call together the legislative assembly of the province.

83. Until the legislature of Ontario or Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec, any office, commission, or employment, permanent or temporary, at the nomination of the lieutenant-governor, to which an annual salary, or any fee, allowance, emolument or profit of any kind, or amount whatever, from the province is attached, shall not be eligible as a member of the legislative assembly of the respective province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the executive council of the respective province, or holding any of the following offices, that is to say: the offices of attorney-general, secretary and registrar of the province, treasurer of the province, commissioner of crown lands and commissioner of agriculture, and public works; and, in Quebec, solicitor-general, or shall disqualify him to sit or vote in the house for which he is elected, provided he is elected while holding such office.

84. Until the legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the union are in force in those provinces respectively, relative to the following matters or any of them, namely:—the qualifications and disqualifications of persons to be elected to sit or vote as members of the assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members, and the

from each other—the province of Quebec imposing in a few particulars the most restrictions and showing a decided indisposition to adopt universal suffrage. Members are paid an indemnity which varies from $800 in Quebec to $172 in Prince Edward Island, with a small mileage rate, in most cases, to pay travelling expenses. The laws providing for the independence of the legislature and for the prevention of bribery and corruption are fully as strict as those which are in force in the case of the dominion elections. In all cases the courts are the tribunals for the trial of controverted

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issuing and execution of new writs in case of seats vacated otherwise than by dissolution, shall respectively apply to elections of members to serve in the respective legislative assemblies of Ontario and Quebec:

Provided, that until the legislature of Ontario otherwise provides at any election for a member of the legislative assembly of Ontario for the district of Algoma, in addition to persons qualified by the law of the province of Canada to vote, every male British subject aged twenty-one years or upwards, being a householder, shall have a vote.

85. Every legislative assembly of Ontario and every legislative assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject, nevertheless, to either the legislative assembly of Ontario or the legislative assembly of Quebec being sooner dissolved by the lieutenant-governor of the province), and no longer. [Extended as respects Quebec to five years by Quebec Stat. 44–45 Vict., c. 7.]

86. There shall be a session of the legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the legislature in each province in one session and its first sitting in the next session.

87. The following provisions of this act respecting the house of commons of Canada, shall extend and apply to the legislative assemblies of Ontario and Quebec, that is to say—the provisions relating to the election of a speaker originally and on vacancies, the duties of the speaker, the absence of the speaker, the quorum, and the mode of voting, as if those provisions were here reenacted and made applicable in terms to each such legislative assembly.

4.—Nova Scotia and New Brunswick.

88. The constitution of the legislature of each of the provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this act, continue as it exists at the union until altered under the authority of this act; and the house of assembly of New Brunswick existing at the passing of this act shall, unless sooner dissolved, continue for the period for which it was elected.

elections. It is hardly necessary to say that the demand upon the classes of men disposed to give up their time to the public service is very considerable, when we reflect upon the large representation required for the parliament and legislatures, apart from the various municipal councils in the several provinces. It has been questioned whether it was quite wise at the inception of confederation to limit the services of capable men to one legislative body, in other words, to prevent dual representation. Be this as it may, the legislatures particularly do not appear in any way inclined to have their members under the influences of the dominion parliament, but prefer being entirely independent of all other legislative authorities. It is only in the Quebec legislative council that a member can also sit in the senate, but this privilege is enjoyed only by one or two men and is very different from dual representation in two representative bodies. It is obvious, so far, that while the house of commons naturally attracts the more ambitious men, since it offers them greater prizes and a wider scope for their ambition, yet the assemblies are filled, for the most part, by men of excellent business habits and practical experience, and, in not a few cases, of conspicuous talent. As much space is given in the leading journals to the debates of the legislatures as to those of the parliament at Ottawa, and it must necessarily be so in view of the importance and variety of the questions that come every session under their cognizance. The very system which makes a government responsible to and dependent on the legislature for its continuance in power must to a great extent explain why these bodies exercise greater influence than do similar authorities in the American states, even with the right of electing senators to congress.

The subjects that come under the purview of the legislatures, from session to session, are multifarious, so extensive is the scope of their legislative powers. The very section giving them jurisdiction over property and civil rights necessarily entails legislative responsibilities which touch immediately every man, woman and child in the province.

If we take up any volume of the statutes of a province, of Ontario for instance, we shall see the truth of the observation I made in the course of the third lecture, that provincial legislation in every way more nearly affects our daily life and interests as citizens of a community than even the legislation of the dominion parliament. In the statutes for 1888 we find laws relative to probate and letters of administration, executions, mortgages, sales of chattels, solemnization of marriage, married women's real estate, benevolent, provident and other societies, liquor licenses, frauds, closing of shops and hours of labor, prevention of accidents by fires in hotels and other places and public buildings, protection of game and fur-bearing animals, protection and reformation of neglected children, agricultural exhibitions, besides a large number of private and local acts for the incorporation of insurance and other companies, for the incorporation of towns, for the issue of debentures for certain local purposes, and the multiform objects which the constitution places under provincial control. Then every session there is the distribution of the public moneys, which, as in the dominion parliament, are voted in the committee of supply, and included in an appropriation act. As I have shown,[1] the provincial funds are provided in a great measure from the dominion subsidies, the sale of public lands, timber licenses, and mining royalties, but each province has a potential right of direct taxation, which so far has never been directly exercised by the legislature itself. In the case of a wealthy province like Ontario, with a surplus revenue, the public expenditures are very comprehensive, and illustrate the importance of the interests involved. In 1888 there was required for civil government, $198,745; administration of justice, $366,476; education, $581,412; maintenance of public institutions, $705,664; agriculture, $141,931; hospitals and charities, $113,686; maintenance and repairs of government and departmental buildings, $641,176; public buildings,

[1] See *supra*, p. 73.

$383,062; colonization roads and public works, $157,146, the total amount of expenditure being $3,205,804. From time to time large railway subsidies are granted for the construction of railways within the provincial limits, and this has been done lavishly in the province of Quebec. The total amount of subsidies voted by all the provinces up to 1887 for this purpose was $19,137,720.[1]

The control over provincial legislation is the power of veto allowed to the dominion government, and the judgment of the courts in cases submitted to them in due course of law; matters already considered in the review of the federal system. No authority is given, however, as is the case in some American states to submit a question of constitutional jurisdiction to the provincial courts, though, as I have already shown, such a reference can be made to the supreme court of Canada.[2] In the few states where such a constitutional provision exists, the judges regard the reference as calling upon them simply to act in an advisory capacity and guard themselves from being bound by their opinion, in case the same question comes up for argument and judgment in due process of law.[3] The same principle, if I mistake not, has been laid down by the judges of the supreme court of Canada, when they have been called upon to give an opinion on private bill legislation of parliament and other constitutional points of controversy. The practice has decided advantages if it can be carried out, and

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[1] Canadian Handbook, by George Johnson, p. 92.

[2] See *supra*, p. 66.

[3] In Maine, New Hampshire, Massachusetts, Florida, and Rhode Island (Cooley, Constitutional Limitations, pp. 51, 52) "the legislative department has been empowered by the constitution to call upon the courts for their opinion upon the constitutional validity of a proposed law, in order that, if it be adjudged without warrant, the legislature may abstain from enacting it." This eminent authority doubts if such decisions can be entirely satisfactory, since they are made without the benefit of argument at the bar. They must, however, more or less operate as a check upon careless legislation and are entitled to every consideration as coming from reflective judicial minds.

it would be well to consider whether it cannot be adopted in the case of the provincial courts. Many cases, however, constantly arise in the course of law, with respect to the competency of the legislature to enact certain statutes; and every year sees the British North America Act made clearer, and supplemented by a number of valuable decisions which practically enter into our constitutional system and make it more intelligible and workable.

It is not necessary to dwell at greater length on the power of disallowance than I have already done in the third lecture, but there is one question of some interest which requires a few words of explanation, or rather of comment, since it is not quite intelligible on sound constitutional principles. The British North America Act gives the lieutenant-governor, as well as the governor-general, the power to "reserve" and also to "veto" a bill when it comes before him.[1] The power of reserving bills is exercised by the governor-general in very exceptional cases affecting imperial interests, but there is no instance in our parliamentary history since the concession of responsible government of the exercise of the veto—a royal prerogative, in fact, not exercised even in England since the days of Queen Anne. Lieutenant-governors not infrequently reserve bills, in all the provinces, for the consideration of the governor-general in council; and this is constitutionally justifiable; but the same functionaries in the maritime sections have occasionally vetoed bills of their respective legislatures. Their legal right is unquestionable, but it is a right clearly quite inconsistent with the general principles of British constitutional government which should govern us in all cases.

In the United States, where the power of veto is given to the president, and to all the governors of the states, with only four exceptions, the cabinet or executive officers have no responsibility whatever in matters of legislation, and the power

[1] Secs. 55, 56, 90.

generally operates as a useful check on the legislatures, which otherwise would be left practically without any control on their proceedings. In the Canadian provinces, however, the case is very different, for the ministry in each is responsible to the house and to the lieutenant-governor for legislation. If any bill should pass the houses despite their opposition as an administration, it is clear that they have more or less, according to the nature of the measure, forfeited the confidence of the people's representatives, and it would be a virtual evasion of their ministerial responsibility, for them at the last moment to advise the lieutenant-governor to intervene in their behalf and exercise his prerogative. He might well question their right to advise him at all, since they had shown they had not the support of the legislature of which they were a committee. In Ontario and Quebec no ministry has ever occupied so anomalous a position, and the only explanation that can be offered for the existence of the veto in the other provinces is that by carelessness or ignorance, governments have permitted legislation, which the lieutenant-governor has found to be beyond the competency of the legislature or otherwise very objectionable, and that he has been forced to call the attention of his cabinet to the fact and ask their advice. An executive council has, under these circumstances (for I am speaking from authoritative information on this interesting point) felt itself bound to accept the situation and advise the disallowance of the bill. Under the peculiar circumstances that probably existed, the veto may at times have proved advantageous to the public interests; but looking at the nature of our government, it would be probably wiser to be content with the check which the constitutional act already imposes on improper legislation in a provincial legislature; that is, the general power of veto by the dominion government. It may be added that this is one of the cases in which a superior court in a province might well be authorized to express an opinion, as in certain American states, on the constitutionality of a measure before it passes

finally. The lieutenant-governor would then be placed in a less invidious position.[1]

The judiciary, like its English prototype, evokes respect in every province of Canada, for the legal attainments and high character of its members. Entirely independent of popular caprice, and removable only for cause on the address of the two houses of parliament, it occupies a very advantageous position, compared with the same body in many of the United States. While the administration of justice, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, is one of the matters within the purview of the legislatures, the government of the dominion alone appoints and provides the salaries of the judges of the superior, district and county courts, except those of the probate court in Nova Scotia and New Brunswick.[2] It has

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[1] See Bourinot's Parliamentary Practice of Canada (pp. 578, 581) where this question is more fully discussed.

[2] B. N. A. Act, 1867, sec. 96. The governor-general shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick and the procedure of the courts in those provinces are made uniform, the judges of the courts of those provinces appointed by the governor-general shall be selected from the respective bars of those provinces.

98. The judges of the courts of Quebec shall be selected from the bar of that province.

99. The judges of the superior courts shall hold office during good behavior, but shall be removable by the governor-general on address of the senate and house of commons.

100. The salaries, allowances and pensions of the judges of the superior, district and county courts (except the courts of probate in Nova Scotia and New Brunswick) and of the admiralty courts in cases where the judges thereof are for the time being paid by salary, shall be fixed and provided by the parliament of Canada.

129. Except as otherwise provided by this act, all laws in force in Canada, Nova Scotia or New Brunswick at the union, and all the courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick,

been also decided that the dominion parliament is at liberty to create new courts, when public necessity may require it, for the better administration of the laws of Canada, or to assign to the jurisdiction of existing courts any further matters appropriate to their sphere of duty. For when legislating within its proper bounds, that parliament is clearly competent to require existing courts in the respective provinces, and the judges of the same, who are appointed and paid by the dominion, and removable only by address from the same parliament, to enforce their legislation. Such an "exercise of authority constitutes no invasion of the rights of the local legislatures."[1]

In all the provinces there is a supreme court, or court of appeal; and superior courts, known under the legal designations of high courts of justice, court of queen's bench, or superior court. Besides these tribunals of complete civil and criminal jurisdiction, there are various other courts with inferior or special functions, known as county, district, surrogate or probate, maritime[2] and magistrates' courts, all of whose

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respectively, as if the union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under acts of the parliament of Great Britain or of the parliament of the united kingdom of Great Britain and Ireland) to be repealed and abolished, or altered by the parliament of Canada, or by the legislature of the respective province, according to the authority of the parliament or of that legislature under this act.

[1] This judgment was given in the case of Valin *v.* Langlois, in which the validity of the dominion act imposing upon the judges the trial of dominion controverted elections was questioned. See Can. Sup. Court Rep., Vol. III, p. 70. Also 5 App. Cas., 115.

[2] The maritime court of Ontario is a dominion court, established by act of parliament, on account of the growing importance of the maritime business on the lakes. See Can. Rev. Stat., c. 137; Canada Law Times, Vol. III, pp. 1–13.

Maritime jurisdiction over the high seas is a branch of international law which is administered throughout the British colonies by the imperial vice-admiralty courts established therein. See Todd's Parl. Govt. in the Colonies, p. 188.

duties are defined by statute. So far as our circumstances have permitted, the changes in the organization and procedure of the English courts have been followed in the English-speaking provinces; and this is especially true of Ontario, where the judicature act is modelled upon that of England, and provides for a supreme court of judicature, consisting of two permanent divisions, called the high court of justice for Ontario, and the court of appeal for Ontario. The first division is again divided into three parts, queen's bench, chancery and common pleas. In Ontario, as in the other English provinces, the recent practice of England has been followed, and though the title of chancellor, or judge in equity, still exists in some courts, there is a fusion of law and equity; in the high court of justice in Ontario and in the supreme court in Nova Scotia, for instance. The law provides every legitimate facility for appeals from every inferior court in a province, and causes may be taken immediately to the privy council of England; or, as generally happens, to the supreme court of Canada at Ottawa, previously to going before the court of the last resort for the empire at large.[1] In the organization and procedure of the courts from the earliest times since Canada became a possession of England, we can see how closely Canadians imitate her institutions in all respects. The names of the courts are for the most part identical. The justices of the peace who are still appointed by the crown, as represented by the lieutenant-governor in the provinces, date from the days of Edward III. As in England, there is no limit to the number that may be appointed in a district, and consequently in some of the provinces the privilege has been often abused by different governments, in order to satisfy the petty ambition of their friends and supporters. The courts of quarter or special sessions, which were held by the magistrates for the trial of certain causes, but especially for the imposition and expenditure of local taxes in counties, long existed in all the provinces; but with the establishment

[1] See *supra*, p. 66.

of municipal institutions and the organization of county and other courts, they have practically disappeared from the legal structure, although relics of their powers still exist in the province of Quebec, where the recorders of Quebec and Montreal are judges of sessions, and in the general sessions of the peace in Ontario.

The criminal law of England has prevailed in all the provinces since it was formally introduced by the proclamation of 1764, and the Quebec act of 1774. The French Canadians never objected to this system of law, since in many respects it was more humane and equitable than their own code. The civil law, however, has continued to be the legal system in French Canada since the conquest, and has obtained a hold now in that section, which ensures its permanency as an institution closely allied with the dearest rights of the people. Its principles and maxims have been carefully collected and enacted in a code which is based on the famous code of Napoleon. The rules of procedure relating to the civil law have also been formulated in a distinct code. The civil law of French Canada had its origin like all similar systems, in the Roman law, on which were engrafted, in the course of centuries, those customs and usages which were adapted to the social condition of France. The various civil divisions of France had their special usages, which governed each, but all of them rested on the original basis of the Roman law, as compiled and codified under Justinian. The customary law of Paris became the fundamental law of Canada, and despite the changes that it has necessarily undergone in the course of time, its principles can still be traced throughout the present system as it has been codified of late years. The French civil law has been materially modified since 1763, by contact with the English laws and customs, and by the necessities and circumstances of a new country; but still, despite all the amendments and modifications it has undergone in order to make it more in consonance with the conditions of modern life and the needs of commerce and enterprise, it displays in their

integrity all those important principles which have the sanction of ages in all those countries where a similar system prevails, and which touch the civil rights of individuals, the transfer of property, marriage and inheritance, and other matters of vital interest to all persons in a community.

In the other provinces the common law of England forms the basis of their jurisprudence. Its general principles were brought into this country, as into the United States, by the early colonists as their natural heritage; but they never adopted those parts of the law which were not suited to the new condition of things in America. It is a system replete with the principles of individual liberty and self-government and giving large scope to enterprise and energy in colonization. In addition to the body of the common law, Canada has also availed itself of those statutes which have been framed in England from time to time, in consonance with the condition of things to which the old maxims of the law could not apply. The establishment of legislatures in the provinces, we have seen, was only a little later than the entrance of the large British population, and it was therefore in their power to adapt English statutes to the circumstances of this country at the very commencement of our history, or to pass such enactments as were better suited to the circumstances of the country. Thus it happens that gradually a large body of Canadian statutory law has been built upon the common law base of the legal structure, and with a view of making the law more intelligible, it has consequently been wisely ordered, at different times since 1854, that all these statutes should be revised and consolidated by commissions composed of learned lawyers and judges. The people of the dominion and of all the provinces have now easy access to the statutory law that governs them within the respective constitutional limits of the parliament and the legislatures. It is also found convenient in the intervals between the consolidations of the statutory law to collect together, from time to time, all the enactments on a particular subject and incorporate them, with such amend-

ments as are found necessary, in one statute. This has been found especially useful in the case of laws affecting railways, insurance companies, the territorial government, and other matters of large public import. The other advantage of this practice lies in the fact that it lessens the labor of a greater consolidation at a later period. The criminal law has been consolidated in this way and forms a distinct code.

While it is only in Quebec that there is a system of municipal or civil law distinct from the common law, there are at the same time in all the other provinces certain differences in the statutory law, affecting civil rights and property, that have grown up from the commencement of their history as separate political entities, until the present time. But as the principles that lie at the basis of their private law are derived from the same source of law and are in the main identical, the authors of the constitution have granted a general authority to the parliament of the dominion to give uniformity, at any time, to the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick; but in case of parliament making such provision, it shall not have any effect until it is formally ratified by the legislatures.[1] No effort has been made so far in this direction, and it is now hardly probable that the provinces would be willing to sanction such a radical change, since it would give parliament thenceforth unrestricted powers over property and civil rights. The provinces having had the enjoyment of their jurisdiction for so many years and seen how

[1] B. N. A. Act, 1867, sec. 94. Notwithstanding anything in this act, the parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any act in that behalf, the power of the parliament of Canada to make laws in relation to any matter comprised in any such act shall, notwithstanding anything in this act, be unrestricted, but any act of the parliament of Canada making provision for such uniformity shall not have effect in any province unless and until it is adopted and enacted as law by the legislature thereof.

closely it is identified with provincial rights and interests, would hardly now consent to place themselves in a position of entire subordination, in this important respect, to the dominion government.

The position of the judiciary of Canada may be compared with that of the federal judiciary of the United States, since the latter has a permanency and a reputation not enjoyed by the courts of all the states. The president appoints, with the approval of the senate, not only the judges of the supreme court at Washington, but the judges of the circuit and district courts. In the majority of the states, however, the judges are elected by the people, and in only four cases is there a life tenure. The average term of a judge's official life in that country is from eight to ten years; but there have been no instances of removal during that term, while they have faithfully discharged their functions. As in Canada, judges may be removed, in thirty states, upon an address of two-thirds of each branch of the legislature. Their salaries are not large: the judges of the supreme court of the United States receive $10,000 each and the chief justice $500 in addition; of the circuit courts, $6,000; of the district courts, from $3,500 to $4,000; of the supreme courts in the states, from $1,500 to $2,000; the average being from $4,000 to $5,000.[1] All writers who have studied the relative positions of the American judiciary agree that the influence of the elective system, of short tenure, and of small salaries has not been always favorable to the standard of the bench in the several states. The small salaries especially deter lawyers of conspicuous ability and large practice from accepting such positions. The supreme and circuit courts of the United States, however, occupy a vantage ground from their permanency and the nature of their functions, which embrace a wider sphere of study and interest. On the whole, however, with all the disadvantages under which the state judiciary labors, it is generally admitted that the dignity

[1] See Spofford's American Almanac, 1889.

of the office, and the general respect for the law—an inheritance from their British ancestors—tend to act as a counterpoise to the influences of which I have already been speaking. In Canada the salaries are even less than in the United States, and there are also inequalities between the provinces, which ought to be removed, and salaries generally increased. The judges of the supreme court of Canada receive $7,000 each, and the chief justice $8,000; the chief justices in Ontario and Quebec $6,000, and the judges of the superior court from $5,000 to $3,500; the chief justices in the other provinces $5,000, and the judges $4,000, except in Prince Edward Island where the amounts are $4,000 and $3,200. The county and district judges only receive from $2,000 to $2,400—too small a sum for a hard worked class—but in the case of these and other judges there are sufficient sums allowed for travelling expenses. On their retirement they are entitled to a considerable annuity fixed by law. Although the salaries are small compared with what a leading lawyer can make at the bar, yet the freedom of the office from popular caprice, its tenure practically for life, its high position in the public estimation, all tend to bring to its ranks men of learning and character. Since those deplorable times in Canadian history when there was a departure from the wise principle of having the executive and legislative department in separate hands, the bench has evoked respect and confidence; and there have been no cases of the removal of a judge on the address of the two houses. It says much for the different governments of Canada, and especially for the present premier[1] who, more than any other Canadian statesman, has had the responsibility of such important appointments through his long tenure of office, that they have never been led for political reasons to lower the standard of the bench by the elevation of improper persons. Such positions are not necessarily given as a reward for political services; for in numerous instances the ablest men have been chosen from

[1] The Right Honorable Sir John A. Macdonald, P. C., G. C. B.

the bar without reference to their political status. The legislative arena, however, necessarily attracts not a few of the finest intellects of the bar in all the provinces, and the very experience they there gain of legislation is undoubtedly favorable to their usefulness, should they, as often happens, accept the dignified and relatively comfortable (that is compared with active political life) position of a seat on the bench in whose meritorious history all of us take a very proper pride.

I must now direct your attention briefly to the important place occupied by local self-government in the provincial structure. In the days of the French regime, as I have already shown you, a system of centralization was established by Louis Quatorze, who so pitilessly during his reign enforced "that dependence which," as Saint Simon tells us, "reduced all to subjection," everything like local freedom was stifled, and the most insignificant matters of local concern were kept under the direct control of the council and especially of the intendant at Quebec. Until 1841 the legislature of Quebec was practically a municipal council for the whole province, and the objection of the *habitants* to any measure of local taxation prevented the adoption of a workable municipal system until after the union of 1841. In Upper Canada, however, the legislature was gradually relieved of many works and matters of local interest by the adoption of measures of local government which infused a spirit of energy and enterprise in the various counties, towns and cities. The union of 1841 led to the introduction of municipal institutions in both the provinces, in conformity with the political and material development of the country. By 1867 there was an exceedingly liberal system in operation in Upper and Lower Canada, but the same thing cannot be said of the maritime provinces. It has been only within a few years that the legislatures of Nova Scotia and New Brunswick have organized an effective municipal system, on the basis of that so successfully adopted for a long time in the larger provinces. In Prince Edward Island, however, matters remain pretty much as they were half a cen-

tury ago, and the legislature is practically a municipal council for the whole island. At the present time all the provinces, with this one exception, have an excellent municipal code, which enables every defined district, large or small, to carry on efficiently all those public improvements essential to the comfort, convenience, and general necessities of the different communities that make up the province at large. Even in the territories of the North-west, every proper facility is given to the people in every populous district, or town, to organize a system equal to all their local requirements.[1]

The municipal institutions of Canada are the creation of the respective legislatures of Canada, and may be amended or even abolished under the powers granted to that body by the ninety-second section of the fundamental law. The various statutes in force establish councils composed of wardens, reeves, mayors, and councillors or aldermen, in every county, township or parish, town and city in the provinces. These councils are representative in their nature, in accordance with the principle that rests at the basis of our general system of local government. The wardens and reeves are elected as a rule by the council, and the mayors directly by the rate payers in cities. The powers and authorities of the various municipalities are regulated by general statutes, but there are also special acts of incorporation in the case of many cities and towns. These various municipal organizations have the power of imposing direct taxes for municipal purposes, including public schools, and all other objects that fall within the legitimate scope of their local requirements. Taxation is limited to a certain rate on the dollar, and is imposed on real property, as well as on bonds, stocks, and other personal property, and on incomes in the province of Ontario. All the municipalities have large borrowing powers, and the right to issue debentures to meet debts and liabilities incurred for necessary improvements, or

[1] See Bourinot's Local Government in Canada, in Johns Hopkins University Studies.

to assist railways of local advantage. This power of assisting railways by subsidies has been largely used, though chiefly in Ontario; by the end of 1884 the municipalities had already paid $12,472,000 to secure railway communication. The councils, however, cannot directly grant this aid, but must pass by-laws setting forth the conditions of the grant and the means of meeting the prospective liabilities, and submit them to the vote of the rate-payers, of whom a majority must approve the proposition. The reference to the people at the polls of such by-laws is one of the few examples which our system of government offers of a resemblance to the *referendum* of laws passed by the Swiss federal legislature to the people for acceptance or rejection at the polls. It is a practice peculiar to municipal bodies, though the same principle is illustrated in the case of the Canada Temperance Act, which was passed by the dominion parliament, and can only come into operation with the consent or at the option of the community to which it is referred, in accordance with the provisions laid down in the statute. Even after it has been adopted it may also be repealed by submitting another by-law to the people immediately interested, as in fact we have seen done in so many cases during the last few months, on account of the unpopularity or the unsatisfactory operation of the law. It is an interesting question how far it is competent for a legislative body entrusted with the power of making laws to refer the adoption or rejection of a general law like that of the Temperance Act to the people of the whole province or of a particular district. A very high American authority has well said that "it is not always essential that a legislative act should be a competent statute which must in any event take effect as law at the time it leaves the hand of the legislative department. A statute may be *conditional*, and its taking effect may be made to depend upon some subsequent event." The highest courts have declared this local option law of Canada as within the competency of parliament under the powers granted it by the constitution, but in any case it does not appear to be any surrender of the law-making power to

submit simply the question of its acceptance to the voters of the locality especially interested in such questions. To cite again the eminent author just quoted: "Affirmative legislation may in some cases be adopted, of which the parties interested are at liberty to avail themselves or not, at their option. A private act of incorporation cannot be forced upon the corporation; they may refuse the franchise if they so choose. In these cases the legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfect legislation, notwithstanding its actually going in operation as law may depend upon its subsequent acceptance."

The necessity of submitting by-laws to the people in a municipality, however, rests on the constitutional authority of the legislature which, in the general law passed for the regulation of municipalities, has thought proper to provide such means of reference to the rate-payers of a locality. On general principles, indeed, the powers of legislation bestowed in this way on municipal corporations cannot be considered "as trenching upon the maxim that legislative power must not be delegated, since that maxim is to be understood in the light of the immemorial practice of this country and England, which has always recognized the propriety and policy of vesting in the municipal organizations certain powers of local regulation, in respect to which the parties immediately interested may fairly be supposed more competent to judge of their needs than any central authority. As municipal organizations are mere auxiliaries of the state or provincial government in the important business of municipal rule, the legislature may create them at will from its own views of propriety or necessity and without consulting the parties interested; and it also possesses the like power to abolish them, without stopping to inquire what may be the desire of the corporation on that subject."[1]

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[1] All these citations are from Cooley's Constitutional Limitations (pp. 139–148) where the whole subject is fully discussed. His remarks apply to Canada as well as to the United States.

Of the right of the provincial legislatures to delegate powers specially given them by the constitution to any body or authority also created by themselves, we have a decision of the privy council in the case of the liquor license act of Ontario (the most important yet given by that tribunal on the constitutional jurisdiction of the provinces), which authorized certain license commissioners to pass resolutions regulating and determining within a municipality the sale of liquors.[1] The maxim *delegatus non potest delegare* was distinctly relied upon by the opponents of the measure, but the judicial committee emphatically laid down that such an objection is founded on an entire misconception of the true character and position of the provincial legislatures. Within the limits of its constitutional powers "the local legislature is supreme and has the same authority as the imperial parliament, or the parliament of the dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to the subjects specified in the enactment, and with the object of carrying the enactment into operation and effect." Such an authority is, in their opinion, "ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail." A legislature in committing important regulations to agents or delegates, it is decisively stated, does not by any means efface itself; for "it retains its powers intact and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands." And how far it "shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for courts of law, to decide."[2]

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[1] See *supra*, p. 54.

[2] See 9 App. Cas., 117; or Legal News, Vol. VII, p. 23. The learned judgment of the Ontario court of appeal in this famous case contains abundance

The power of passing by-laws and imposing taxation accordingly gives to the various municipal councils of the provinces a decided legislative character. The subjects embraced within their jurisdiction are set forth with more or less distinctness in the municipal acts of the provinces, especially of Ontario. The council of every township, city, town or incorporated village may pass by-laws for the construction and maintenance of waterworks, the amounts required to be collected under local improvement by-laws, licensing and regulating transient traders, the purchase of real property for the erection of public school houses thereon, cemeteries, their improvement and protection, cruelty to animals, fences, exhibitions and places of amusement, planting and preservation of trees, gas and water companies, public morals, giving intoxicating liquor to minors, nuisances, sewerage and drainage, inspection of meat and milk, contagious diseases, fevers, prevention of accidents by fire, aiding schools, endowing fellowships, markets, police, industrial farms, charities and numerous other subjects immediately connected with the security and comfort of the people in every community.[1] The most important duty of every municipality, especially in the cities, is the imposition and collection of taxes. The burden of taxation is on real property, and the difficulty is felt in the same measure in Canada as in the United States of obtaining accurate returns for taxation purposes, of all intangible property in the shape of bonds, mortgages, and other securities held by individuals. The same may be said of returns of incomes, except in the case of public officials and clerks, of whose salaries it is easy to obtain information.[2] The statistics of this kind of property,

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of precedents for legislation entrusting a limited discretionary authority to others, and gives many illustrations of its necessity and convenience.

[1] See Rev. Stat. of Ontario, 1887, chap. 184, for examples of the large powers entrusted to municipalities in probably the best constructed municipal system in the world.

[2] The official incomes of the officers of the dominion government cannot be taxed by the provinces or the municipalities thereof. Leprohon v. City of Ottawa, 2 App. Rep. Ont., p. 522.

as given in assessment rolls, are very unreliable. For instance, we find that while the assessed value of real property in Ontario increased from $325,484,116 in 1873 to $583,231,133 in 1883, the assessed value of the personal property only increased during the same period of prosperity from $49,010,772 to $56,471,661; and it must be remembered that the assessors, especially in rural districts, generally place the value of real property at a low rate. The exemptions from taxation comprise all government and public property, places of worship and lands connected therewith, and a great number of buildings occupied by scientific, educational, and charitable institutions. In the province of Quebec, where the Church of Rome has accumulated a vast amount of valuable property, especially in and near Quebec and on the island of Montreal, the value of exemptions is estimated at many millions of dollars. In Ontario an agitation has commenced against the continuance of a law which restricts the assessment in certain localities to relatively narrow limits, but the religious and other interests that would be effected are likely to prevent any change for a long time to come. In Quebec it is quite impracticable.

The municipal system on the whole is creditable to the people of Canada. It has its weaknesses, owing in some measure to the disinclination of leading citizens, especially in the cities and large towns, to give much of their time to municipal duties, although every person is so deeply interested in their efficient and honest performance. Jobbery and corruption are, however, not conspicuous characteristics of municipal organizations in the provinces; and we have no examples happily in our history at all inviting comparison with the utter baseness of the Tweed ring in New York. In the rural municipalities of Ontario there is a greater readiness than in the large cities to serve in the municipal councils, and as I have already shown, those bodies have given not a few able and practical men to parliament. On an effective system of local self-government rests in a very considerable degree the

satisfactory working of our whole provincial organization. It brings men into active connection with the practical side of the life of a community and educates them for a larger though not more useful sphere of public life.[1]

The Territories of Canada, to whose organization I must now refer, comprise a vast region stretching from the province of Manitoba to the Rocky Mountains, and from the frontier of the United States to the waters of the North. It embraces more than two-thirds of the dominion, probably 2,600,000 square miles, and is watered by the Red, Saskatchewan, Assiniboine, Peace, Mackenzie and other rivers of large size and navigable for the most part by steamers of low draft. This region came into the possession of Canada by a purchase of the rights of the Hudson's Bay Company,[2] who had so long enjoyed a monopoly of the fur trade, and used their best efforts to keep it a *terra incognita*. The government of the dominion now holds complete jurisdiction over the territory, out of whose fertile lands must, sooner or later, be developed ten or twelve provinces as rich and prosperous as any of the great north-western states. The provisional district of Keewatin was formed some years ago out of the eastern portion until the settlement of the boundary dispute between Ontario and the Dominion; but since that question was settled it has only a nominal existence, though it still remains under the supervision of the lieutenant-governor of the province of Manitoba. In 1882 a large portion of the north-west region was divided

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[1] "I have dwelt," says John Stuart Mill, in Representative Government, ch. xv, "in strong language on the importance of that portion of the operation of free institutions which may be called the public education of the citizens. Now of this education the local administrative institutions are the chief instruments."

[2] B. N. A. Act, 1867, sec. 146, provides for admission of Territories. See also Imp. Stat., 31 and 32 Vict., c. 105, (Can. Stat. for 1869); Can. Commons Jour., 1869, pp. 149, 156; Can. Stat., 32 and 33 Vict., c. 3; Imp. Stat., 34 and 35 Vict., c. 28.

into four districts for postal and other purposes.[1] Assiniboia, now the most populous district, contains about 95,000 square miles; Saskatchewan, 114,000; Alberta, 100,000; and Athabasca, 122,000. Beyond these districts lies an immense and relatively unknown region, watered by the Peace, Slave and Mackenzie rivers, and believed to be capable of raising cereals and supporting a large population. The total number of settlers, who have mostly come into the country within six years, does not exceed forty thousand souls, scattered over a wide region; but villages and towns are springing up with great rapidity throughout the west, and immigration is flowing over the rich wheat-producing prairies of the district of Assiniboia. The authorities at Ottawa control the government of the territories. Until the winter of 1888, they were governed by a lieutenant-governor and council, partly nominated by the governor-general in council and partly elected by the people. In the session of 1888, the parliament of Canada passed an act granting the territories a legislative assembly of twenty-two members, but they do not enjoy responsible government like the provinces. The lieutenant-governor, who is appointed by the governor in council, for four years, has, however, the right of choosing from the assembly four members to act as an advisory council in matters of finance. Three of the judges of the territories sit in the assembly as legal experts, to give their opinion on legal and constitutional questions as they arise; but while they may take part in the debates they cannot vote. The assembly

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[1] B. N. A. Act of 1871 (amending that of 1867 in order to remove certain doubts as to the powers of Canadian parliament) enacts:

2. The parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may at the time of such establishment make provision for the constitution and administration of any such province and for the passing of laws for the peace, order and good government of such province, and for its representation in the said parliament.

has a duration of three years and is called together at such time as the lieutenant-governor appoints. It elects its own speaker and is governed by rules and usages similar to those that prevail in the assemblies of the provinces. Each member receives $500, the legal experts $250, a session, besides an allowance for travelling expenses. The parliament of Canada provides nearly all the funds necessary for carrying on the government and meeting necessary expenses for local purposes. The elections are by open voting; the electors must be *bonâ fide* male residents and householders of adult age, who are not aliens or unenfranchised Indians, and who have resided within the district for twelve months before the election. The civil and criminal laws of England are in force in the terrritories, so far as they can be made applicable; and the lieutenant-governor and assembly have such powers to make ordinances for the government of the North-west as the governor-general in council confers upon them; but their powers cannot at any time exceed those conferred by the constitutional act upon the provincial legislatures. There is a supreme court, composed of five judges, appointed by the Ottawa government, and removable upon the address of the senate and house of commons. The court has, within the territories, and for the administration of the law, all such powers as are incident to a superior court of civil and criminal jurisdiction.[1] The territories are represented in the senate by two senators and in the house of commons by four members, who vote and have all the other privileges of the representatives of the provinces. In this respect the territories of Canada enjoy advantages over those of the United States territories, which are not represented in the senate, but have only delegates in the house of representatives without the right of voting. Year by year, as the population increases, the people must have their political franchises enlarged. The time has come for introducing the ballot, and the inhabitants are an exceedingly intelligent class, drawn for

[1] Can. Rev. Stat., chs. 7, 50; Can. Stat., 1887, ch. 3; 1888, ch. 19.

the most part, so far, from Ontario and the other English provinces, and are in every way deserving of governing themselves in all local matters, with as little interference as possible from the central authority.

There are in the territories some 30,000 Indians, chiefly Assiniboines, Crees, Bloods, and Blackfeet, in various stages of development. They are the wards of the Canadian government, which has always exercised a paternal care over them. They are fed and clothed in large numbers. Before lands were laid out for settlement, the Indian titles were extinguished by treaties of purchase, conducted between the representatives of the dominion and the councils of the several tribes. The Indians live on reserves set apart for them in valuable districts; schools and farm instruction are provided by the government, with the creditable hope of making them more useful members of the community. Agents live on the reserves, and inspectors visit the agencies from time to time to see that the interests of the Indians are protected in accordance with the general policy of the government. The sale of spirituous liquors is expressly forbidden in the territories, chiefly with the view of saving the Indians from their baneful influences.[1] The liberal policy of the government with respect to the Indians is deserving of the encomiums which it has received from all those who have studied its operation. So far as I can judge from careful inquiry, the effects of the policy are on the whole excellent, and Indians generally are every way gaining greater confidence in the government of the country. Of course it is difficult, if not impossible, in the great majority of cases, to make a decided radical change in the habits of the older Indians, and educate them to become competitors of the white man in industrial pursuits; but it is gratifying to find that so large a number are already tilling the soil with a moderate and, for them, an encouraging measure of success. The schools established by the government are well patronized, and on all sides, in short,

[1] See Can. Rev. Stat., c. 43, regulating all matters respecting the Indians.

I see much hope for the future generations of the Indian race in the territories of Canada. At all events, good must continue to arise from the operation of the established policy, and Canadians will always feel that they have done their duty towards a race which has never in the past been treated with similar generosity and kindness in the territories of the United States.

A federal government controlling all matters essential to the general development, the permanency, and the unity of the whole dominion, and several provincial governments having complete jurisdiction over all subjects intimately connected with the comfort and convenience, the life and property, the happiness and prosperity of the various communities of people that dwell within the limits of these local organizations; these are the dominant features of the federal structure. Elements of weakness may exist in the financial basis on which the structure rests, and in the veto power given to the central authority over the acts of the provincial governments. The upper houses of the legislatures have none of the strength and influence of the senates of the United States, and can exercise, under their present constitution, relatively little of that control over the legislation of a popular house which may be found useful at critical times. Apart from what are considered constitutional defects and sources of conflict between the central and provincial authorities, there are other conditions of their political system which may awake serious apprehensions in the minds of thoughtful publicists and statesmen. An eminent English thinker, Professor Seeley, has said that "there are in general three forces by which states are held together, community of race, community of religion, and community of interest.[1] When we come to make an application of this doctrine to Canada, we see that there is one large province under the direct, practically unrestricted, control of a large and rapidly increasing population, speaking a language, professing a reli-

[1] Expansion of England, p. 50.

gion, and retaining certain institutions, different from those of the majority of the people of the dominion. I have already shown the remarkable influence this French race has naturally exercised over the conditions of our political existence, and in the formation of our constitutional system. From time to time in our history such antagonisms as must always arise when there are racial and religious differences in a community, have shown themselves with more or less intensity. As I have already shown in the first lecture, this antagonism led to unhappy results in our early annals, and left a sad blot on our political history. In these later times, with the development of civil liberty and with a wiser understanding of the principles that should govern communities, living under the same system of government, the instances have been few and relatively unimportant, when a conflict of opinion has arisen between the two races that inhabit Canada. Our political history for half a century has been eminently creditable to the good temper, patience and moderation of the leading men in French as well as in English Canada. At critical moments conciliatory counsels have invariably prevailed in the end over the dictates of unreason and passion. All people and communities within the dominion have already learned that in the parliament they can always find every consideration and justice given to their fair and legitimate claims. No one can foresee the time when an amalgamation of the two races will be possible, when the language and institutions of French Canada will disappear. It may be there are those in English Canada who regret that there are no signs as yet of such an effacement. It seems inevitable that the great energy and colonizing capacity of English speaking peoples will obtain the supremacy, and open up and control the provinces that must soon be carved out of the great territories of the North-west; and the French Canadian race will find itself in a far smaller minority than at present. But there is no reason to suppose that it will ever cease to be an important influence in the confederation, which the Canadians, irrespec-

tive of race and religion, are establishing in a continuous line of provinces from the Atlantic to the Pacific shores. Though there are differences in language and certain institutions between the French and English Canadian peoples, yet there is an equal community of interest between both. Our history for more than a century gives us very clear illustrations of the thorough appreciation that both races have of this identity of interest. They have labored with equal patriotism to build up the confederation and develop its resources. The results of this union of races in the work of strengthening and promoting the welfare of the dominion has so far been eminently encouraging. A large intercolonial trade has been developed, railways have spanned the continent, and public works of equally national importance have been completed, and numerous other measures passed, all in the direction of consolidating the union. The foundations of a new nationality have been already laid by the common efforts of the two races, united as they are by the strong ties of a common interest; and as long as they continue to pursue the same wise policy of mutual compromise and mutual forbearance on all occasions of difference, it is impossible to exaggerate the possibilities that seem open to a dominion in the possession of institutions so fully worthy of the respect and confidence of its people.

INDEX TO SEVENTH VOLUME

OF

Johns Hopkins University Studies

IN

HISTORICAL AND POLITICAL SCIENCE.

A

Adams, *Dr.* H. B., 195; quoted, 199, 205, 212, 230, vii–ix, 41, 110.
Adams, *Judge* S. W., vii–ix, 4, 5.
Agawam, visited by men from Newtown, vii–ix, 12.
Albemarle Academy, 202.
Alcalde, 82, 83, 85, 93, 101; functions of, 86, 96, 97, 98, 101; office of, abolished in San Francisco, 111; restored, 115; abolished by charter of 1850, 132; in Louisiana, 164.
Andrews, *Judge*, quoted, vii–ix, 121.
Andrews, Charles M., on the river towns of Connecticut, vii–ix.
Assembly, legislative, of San Francisco, 107 ff.
Atkinson, 250.
Atwater, E. E., quoted, vii–ix, 55.
Auxiliary Sanitary Association, in New Orleans, 185.
Ayuntamiento, 84, 85, 87, 88, 89, 90, 91, 100; functions of, 86; abolished in San Francisco, 108; restored, 116; abolished by charter of 1850, 132.

B

Bacon, *Sir* Francis, quoted, 24.
Bancroft, George, message of, to *Commodore* Sloat, quoted, 93.
Barbour, James, 241.
Barbour, P. P., 241; offered law professorship, 311.
Barlow, Peter, 287, 295, 299.
Barnett, *Rev.* S. A., 24; and the University Colony in East London, 58, 59, 60.
Bartlett, *Lieut.* W. A., 95, 99.
Berkeley, *Bishop*, 302.
Berlin, Connecticut, vii–ix, 75, 76.
Bienville, founds New Orleans, 160.
Biloxi, settled, 159.
Birkbeck, *Dr.* George, assists Gilmer, 285, 292, 300; and the University of London, 298.
Blaettermann, *Dr.* George, 292, 313; engaged as professor in University of Virginia, 244, 245, 246, 306.
Blake, quoted, vii–ix, 107.
Blake, *Hon.* Edward, quoted, 497, 504, 509, 537, 580, 581.
Blok, Adrian, explores Connecticut, vii–ix, 10.
Bloomfield, vii–ix, 75, 76.
Bond, quoted, vii–ix, 43.
Bondelier, quoted, 96.
Bonnycastle, Charles, 287; made professor in University of Virginia, 299; arrives, 311; transferred to Key's chair, 313.
Boston Courier, quoted, 307.
Bourinot, *Dr.* John G., on federal government in Canada, 457–618; quoted, 485, 504, 511, 514, 523, 585, 597, 606.

Bowditch, Nathaniel, 212.
Bozman, J. L., quoted, vii–ix, 41.
Bradford, William, vii–ix, 7; letter of, to Minuit, quoted, 7, 15.
Breckinridge, *Mrs.* E., 196.
Breckinridge, James, 209.
British Columbia, union with, 582. (See Canada.)
British North America Act, 1867. (See Canada.)
Brock, R. A., 217.
Brockenborough, Wm., 241.
Bronson, *Dr.* Henry, quoted, vii–ix, 79, 84, 86.
Brougham, Henry, 244, 245, 292, 293; letter of, quoted, 247; and the University of London, 298.
Brown, *Hon.* George, quoted, 529, 553.
Bryce, James, quoted, 517, 521, 523, 548, 560, 568.
Bucareli, San Francisco founded at command of, 75.
Buchanan, George, 269, 270.
Burke, quoted, 24.
Burnett, P. H., 126, 130; and the San Francisco town lots, 126, 129.
Burwell, Wm. A., 220.
Butler, *Chief Justice*, quoted, vii–ix, 121, 122.
Butler, *Dr.* Samuel, 281.

C

Cabell, Joseph C., 203, 309; and the University of Virginia, 203 ff.; quoted, 213, 237; negotiates with Tucker, 307; suggestions of, as to law professorship, 311.
Cabell, *Col.* Nicholas, 203.
Cabildo, established in Louisiana, 164.
California, local government of, under old régime, 80 ff.; constitutional convention of 1849, 125. (See also San Francisco.)
California Star, quoted, 97, 99, 100.
Campbell, Thomas, 303; letter of, quoted, 297; and the University of London, 298.
Campbell, Thomas Telford, 297, 298.
Canada, federal government in, J. G. Bourinot on, 457–618; French period, 464–469; transition period, 469–473; proclamation of 1763, 470; Quebec act, 471; effect of coming of loyalists, 472; third period, 473–478; Constitutional Act of 1791, 473; difficulties under it, 474; fourth period, 478–482; act of 1841, 478; adoption of British North America Act, 482; general features of the federal system, 485–532; population, etc., 486; leading principles of the system, 488; constitution partly unwritten, 489; amendments of the act, how far possible, 491; position of Canada in the Empire, 492; relations of dominion and provincial governments, 500–524; powers of the parliament, 501; of the provincial legislatures, 503; education, 505; concurrent powers, 507; insurance, 508; criminal law, 508; temperance, 509; disputes under the act, compared with those under Constitution of United States, 511; right to interfere in cases of property and civil rights, 513; veto power of governor in council, 514; courts, 519; dominion and provincial revenues, 524; general considerations, 531; the government and the parliament, 533–576; the separation of departments, 533, 546–548; the governor-general, 534; the council, 541; the premier, 545; the senate, 549; the lower house, 555; parliamentary independence, 562; electoral corruption, 563; methods of business in parliament, 564; committees, 565; public and private bills, 566; supply, 568; motions and inquiries, 570; debate, 572; voting, 574; the civil service, 574; the provinces, 577–618; division into provinces, 579; the lieutenant-governor, 583; case of escheats, 585; the executive council, 586; the legislature, 587; reference to provincial courts, 594; "veto" and "reserve" powers, 595; responsibility of ministry, 595; judiciary, 597; law, 600; comparison with judiciary of United States, 603; local government, 605–612; referendum, 607; Northwest Territories, 612; Indians, 615; conclusion, 616.

Candolle, A. de, 232.
Carlyle, quoted, 32.
Carr, Dabney, 217, 227, 237, 238, 239, 240, 241; offered law professorship, 311.
Cartwright, *Major*, 249, 283, 284, 285, 294.
Cartwright, *Miss* Frances D., 294.
Cassell, quoted, 522, 523.
Central College, 202 ff.
Chapin, quoted, vii–ix, 76.
Chimney-viewers, in Connecticut, vii–ix, 97, 98.
Church lands, in Connecticut, vii–ix, 45.
Church rates, in Connecticut, vii–ix, 114.
Church Reform Union, 46.
Claiborne, W. C. C., 167.
Clergy reserves question, in Canada, 476, 479.
Cocke, *Gen'l* John H., 204, 209, 237, 241.
Coit, Stanton, 67, 68, 69; founds Neighborhood Guild, 65.
Colbert, 465.
Commissioner, in Connecticut, vii–ix, 102, 103.
Committee of One Hundred, in New Orleans, 186.
Commons, proprietors', vii–ix, 63 ff.
Connecticut, a study of the river towns of, by C. M. Andrews, vii–ix; Dutch and English in, 5; early explorations in, 9; first settlements in, 13 ff.; hard winter in, 22; earliest government of, 23; new churches in, 25; efforts to check emigration to, 25; compared with Massachusetts, 27; democracy in, 28 ff.; land system of, 32–81; early purchases, 32; Indian reservations, 35; grants by the general court, 36; pensions, 37; subsidized industries, 39, 49; extension of town boundaries, 39; grants to schools, 40; patents of 1686, 40; early town allotments, 42 ff., new towns, 75; suffrage in, 82 ff.; freemen, 82; inhabitants, 89; householders, 89; proprietors, 90; growth of the official system in, 92 ff.; townsmen, 104; constables, 110; town meetings, 112; rates and fines, 114; relation of towns to colony, 118 ff. (See also Hartford, Wethersfield, Windsor.)
Connecticut Journal, quoted, 308.
Constables, in Connecticut, vii–ix, 23, 93, 98, 101, 110 ff.
Constitutional Act of 1791, 473.
Cooley, *Judge* T. M., quoted, 514, 594, 607, 608.
Cooper, *Dr.* Thomas, 204, 205, 206, 209, 210, 308, 309.
Coplestone, *Dr.* Edward, 246.
Corrèa, *Abbé*, 205, 224–226, 228, 234; letter of, quoted, 233.
Cotton, sermon by, vii–ix, 13.
Craigie, *Dr.* David, 274.
Crozat, Anthony, grant to, 160.

D

Dade, *Judge* Wm. A. C., offered law professorship in University of Virginia, 311.
Daggett, *Chief Justice*, quoted, vii–ix, 121.
Darling, *Governor*, case of, 537.
Davies, *Rev.* Llewelyn, 46.
Davitt, Michael, 50; quoted, 51.
Davy, *Dr.* Martin, 247, 249, 251.
Democracy, incomplete in Massachusetts, vii–ix, 27; character of, in Connecticut, 28 ff., 125, 126.
Dicey, A. V., quoted, 489, 496, 520.
District attorney, office of, established in San Francisco, 112.
Dominion of Canada, origin of name, 485.
Dorchester, people of, settle in Connecticut, vii–ix, 18, 21; townsmen of, 104.
Dorchester, *Lord*, 477.
Doutre, quoted, 552.
Drinkwater-Bethune, *Sir* John E., 261.
Drury, *Rev.* B. H., 288.
Drury, *Rev.* Henry J. T., 277, 285, 288.
Dunglison, *Dr.* Robley, professor in University of Virginia, 285, 291, 314.
Du Pont de Nemours, correspondence of, with Gilmer, 228–230.
Durham, *Lord*, report of, on state of Canada, 477, 578.
Dutch, early relations of, with English on the Connecticut, vii–ix, 5–9; purchase land of the Indians, 33; driven out, 34.
Dwinelle, quoted, 84, 87, 88, 90, 92, 96, 109.

E

East Hartford, vii–ix, 75, 76, 80.
East Windsor, vii–ix, 75, 76, 77.
Education, power over, in Canada, 505.
Edwards, Timothy, vii–ix, 76.
Egleston, M., quoted, vii–ix, 40, 74, 90.
Ellington, vii–ix, 75, 76, 77.
Ellis, *Dr.* George E., quoted, vii–ix, 82, 126.
Emerson, quoted, 171.
Emmett, *Dr.* John P., elected professor in University of Virginia, 305, 306, 307.
Entombment, Francia's picture of, 26.
Equivalent, vii–ix, 58, 59.
Escheat, in Canada, 585.

F

Fages, Pedro, 75.
Farmington, vii–ix, 75.
Felch, *Judge*, quoted, 79.
Fence-viewer, in Connecticut, vii–ix, 96, 97, 98, 101.
Figueroa, José, 88.
Fines, in Connecticut, vii–ix, 114 ff.
Fink, J. B., leaves money to New Orleans, 179.
Fleming, 254.
Forbes, *Lord*, 272, 273.
Forbes, E. S., 67.
Freeman, E. A., quoted, 489.
French, sketch of their dominion in Canada, 464–469; language, in the Canadian parliament, 573.
Frontenac, 469.

G

Galpin, Albert, vii–ix, 5.
Galvez, part taken by, in American Revolution, 166.
Geary, John W., 116, 125; on the affairs of San Francisco, 117; vetoes salary ordinance, 140.
Gell, P. L., on the work of Toynbee Hall, 57–64.
Gemmill, quoted, 554.
Gilmer, Francis Walker, correspondence of, 195, 317; birth, 215; early letters, 218; enters William and Mary College, 220; reads law with Wirt, 221; his essays, 224; becomes acquainted with Corrèa, 224; in Philadelphia, 226; botanizing tour, 227; practices law at Winchester, 227; removes to Richmond, 231; offered law professorship, 236; goes to obtain professors, 241; arrival in England, 243; in London, 244; engages Blaettermann, 244; at Cambridge, 249; letter to Peachy Gilmer, 252; to Wm. Wirt, from Stratford, 254; at Oxford, 257; in Edinburgh, 259; negotiations with Key, 259–266; and Leslie, 267; letter to Chapman Johnson, 268; to Peachy Gilmer, 271; to Jefferson, 274, 282, 290; declines law professorship, 276; again in London, 277; negotiations with Long, 277–281; secures Dunglison, 285; and Long, 286; various negotiations, 286, 295; letter to Carr, 292; negotiations with the Harwoods, 297, 299–301; influence on foundation of University of London, 298; secures Bonnycastle, 299; sails for New York, 302; illness after arrival, 304; at Norfolk, 306; newspaper criticisms on importation of professors, 307; delay in professors' arrival, 309; accepts law professorship, 312; declining health, 312, 314; death, 314; literary work, 315, 316; attainments, 316; John Randolph on, 316; letters to, from Ticknor, 319–329.
Gilmer, *Dr.* George, 215; described, 216; death, 217.
Gilmer, Harmer, 218, 223.
Gilmer, James, 218.
Gilmer, John, 195.
Gilmer, Mildred, 217.
Gilmer, Peachy, 217, 314, 317; letters to, 252, 271.
Gilmer, Thomas Walker, 215.
Girod, Nicholas, leaves property to New Orleans, 178.
Glastonbury, vii–ix, 75, 76.
"Good Hope," the, vii–ix, 8.
Gray, *Mr. Justice*, quoted, 495.
Green, S. A., quoted, vii–ix, 30.
Green, *Prof.* T. H., 11, 45, 49, 52.

H

Hadley, size of lots in, vii–ix, 43.
Hall, John, explores Connecticut, vii–ix, 10, 11.
Hampden-Sidney College, 199.
Harbor Master, office of, established in San Francisco, 112.
Hare, J. I. C., quoted, 520.
Harrison, *Dr.* Gessner, 313.
Hartford, Dutch fort at, vii–ix, 8, 9, 17; English settlers at, 20, 25; lands of, 34, 42, 50, 51, 52, 54, 55, 56, 57, 58, 60, 61, 62, 64, 74, 75; town offshoots of, 75; laws against strangers in, 84, 87, 88; earlier growth of official system in, 97. (See also Connecticut, Constables, etc.)
Harvey, George, 287, 295, 299.
Harwood, *Dr.* John, 288, 295, 297; Gilmer's negotiations with, 299–301.
Harwood, *Dr.* William, Gilmer's negotiations with, 299–301.
Haward, in Connecticut, vii–ix, 96, 98.
Hawes, Horace, 116, 126; address of, quoted, 120; objections of, to revenue ordinance, 123; demands information on town lot question, 128; suspended from office, 130.
Hay, George, 232.
Hearn, W. E., quoted, 496, 535.
Henderson, Stephen, leaves property to poor of New Orleans, 178.
Hennen's Digest, quoted, 179.
Henry, *Mr. Justice*, quoted, 510.
History, Toynbee's interest in, 6 ff.
Hittell, quoted, 79.
Hodgson, Adam, 286.
Holmes, *Captain*, expedition of, to Windsor, vii–ix, 9, 10; purchases land of Indians, 32, 34.
Holmes, *Judge*, 227.
Hooker, Thomas, vii–ix, 12, 13; leads emigration to Connecticut, 25; quoted, 26, 92.
Hooker's suit, vii–ix, 91.
Horner, Leonard, 273, 274; and the University of London, 298.
Howe, Wm. W., on the municipal history of New Orleans, 155–187.
Hughes, Thomas, 46.
Hume, Joseph, and the University of London, 298.

I

Iberville, founds Biloxi, 159.
Indians, on the Connecticut, appeal to Plymouth to found a settlement, vii–ix, 7; to Boston, *ib.*, 7; their sales of land to the settlers, *ib.*, 32 ff.; reservations for, *ib.*, 35; policy of Canadian government toward, 615.
Industries, subsidized in Connecticut, vii–ix, 39, 49.
Inspector, in Connecticut, vii–ix, 101.
Insurance, power over, in Canada, 508.
Ivory, James, 245, 283.

J

Jameson, *Prof.* Robert, 276, 277, 278.
Jefferson, Thomas, influence of, on his countrymen, 200; plan for Virginia education, 202; connection with Central College, 202; origin of University of Virginia, 207; its location, 208; establishment, 209; early negotiations for professors, 209 ff.; corresponds with Gilmer, 228; quoted, 232, 242, 248, 305, 306; asks Gilmer to be commissioner to England, 236, 237; on the law professorship, 238–240; anxiety over arrival of professors, 309, 310; prescribes text-books in government, 310; the law professorship again, 311, 312. (See also Gilmer.)
Jeffrey, 272, 273.
Jesuits, in Canada, 472; controversy over their estates, 518–520.
Johnson, Chapman, 209, 237; letter to, 268.
Johnson, Edward, quoted, vii–ix, 12.
Johnson, George, quoted, 594.
Johnson, *Dr.* Samuel, 302.
Johnston, *Prof.* A., his view of incorporation, vii–ix, 78, 94; on origin of townsmen, 105; his theory of town sovereignty criticised, 120 ff.
Judd, quoted, vii–ix, 43.
Justices of the peace, supersede ayuntamiento in California, 91; in Connecticut, vii–ix, 103.

K

Kaye, *Dr.* J., 251.
Keewatin, district of, 612.
Kennedy, alters Wirt's letters, 216.
Kent, *Chancellor*, 306.
Kewen, E. J. C., letter of, quoted, 129.
Key, T. H., 259; Gilmer's negotiations with, 259–266; secured, 282; arrives, 311; returns, 313; subsequent career, 313.
King's College, attempt to secure English professors for, 302.
Knox, *Dr.*, professor in Central College, 204.
Knox, *Dr.* Robert, 278, 286.

L

Lammas fields, vii–ix, 69, 70.
Land system, in the river towns of Connecticut, vii–ix, 32–81.
La Salle, 159.
Laussat, 167.
Laveleye, E. de, quoted, vii–ix, 72.
Law, John, 160.
Lawyers, in Connecticut, vii–ix, 103.
Letellier, *M.*, case of, 536, 584.
Legaré, Hugh S., 228.
Leslie, *Prof.* John, 269, 275, 286, 292; letter from, 267.
Levermore, *Dr.* C. H., quoted, vii–ix, 86, 100, 105.
Lister, in Connecticut, vii–ix, 101.
Lomax, J. T., made professor in University of Virginia, 312.
London, University of, Gilmer's influence on foundation of, 298.
Long, George, 291; offered professorship in University of Virginia, 277; negotiations with, 277–281; accepts, 286; arrival, 306; returns to London, 313.
"Lord's Waste," vii–ix, 18, 19.
Louis XIV, decides to take the government of Canada into his own hands, 465.
Louisiana, discovery of, 159; first settlement in, 159; granted to Crozat, 160; to the Mississippi Company, 160; ceded to Spain, 161; government of, under French, 162; under Spanish, 164; ceded to United States, 167; elective franchise in, 182; boundaries of, 228.
Loyalists, effect of their arrival on Canada, 472.

M

Macdonald, *Sir* John, 499, 543, 604; quoted, 501, 509, 544.
Mackintosh, 292, 293, 294.
Madison, James, 202, 204, 209, 213, 214; quoted, 201; makes out list of theological books for University of Virginia, 301; chooses textbooks in government, 310, 311.
Maine, *Sir* Henry, vii–ix, 30; quoted, 533, 547, 551.
Manchester, vii–ix, 75, 76.
Manitoba, province of, formed, 577; given a constitution, 582. (See Canada.)
Marlborough, vii–ix, 75, 76.
Marshall, John, 197, 520, 521.
Martin, F. X., quoted, 159, 166, 167.
Mary, Joseph C., leaves money to New Orleans, 178.
Mason, *Governor* R. B., quoted, 101, 103, 104.
Massachusetts Bay, and early expeditions to Connecticut, vii–ix, 7, 11; opposes emigration to Connecticut, 13, 25, 26; General Court of, forms provisional government for Connecticut, 23; democracy in, incomplete, 27, 85; perambulation in, 100.
Mather, Samuel, vii–ix, 76.
Maurer, G. L. von, vii–ix, 30.
McClurg, *Dr.*, 221.
McCosh, *Dr.* James, quoted, 68.
McCulloch, J. R., 263.
McDonogh, John, donation of, to Baltimore and New Orleans, 179–181.
Meadow, common, vii–ix, 68 ff.
Merrimac, visited by men from Newtown, vii–ix, 12.
Messuage, vii–ix, 70.
Micheltorena, *Governor*, 93, 95.
Middletown, vii–ix, 79.
Mill, J. S., quoted, 612.
Milne, Alexander, leaves property to New Orleans, 177.
Missions, in California, designed to be temporary, 79.

Mississippi, jetties at mouth of, 161.
Mississippi Company, 160.
Mix, manuscripts of, quoted, vii–ix, 17.
Mofras, quoted, 78, 92.
Monroe, James, 202, 208; recommends professors, 303.
Montague, F. C., on Arnold Toynbee, 1–53.
Montgomery, *Commodore*, occupies San Francisco, 95.
Moraga, José, 76, 78.
Morell, *Captain* Benjamin, quoted, 87.
Morse, John T., Jr., 201.
Moses, B., on the establishment of municipal government in San Francisco, 71–153.
Murray, John A., 247.

N

Neighborhood Guild, C. B. Stover on, 65–70.
New Brunswick, condition of, in 1837, 578; given responsible government, 579. (See Canada.)
Newfoundland, remains out of federation, 482.
New Haven, vii–ix, 86, 100.
Newington, vii–ix, 75, 76.
New Orleans, W. W. Howe on the municipal history of, 155–187; founded, 160; made seat of government, 161; government of, under French, 162; passes to Spain, 163; resistance of inhabitants, 163; new form of government, 164; sources of revenue, 165; in the American Revolution, 166; new government instituted by Laussat, 167; purchased by United States, 167; charter of 1805, 167; its provisions, 168; charter of 1836, 169; of 1852, 170; of 1856, 170; under military rule, 170; Administration system introduced, 171; its merits, 172; abolished by present charter, 173; its provisions, 173; Fire Department, 174; levees, drainage, and paving, 175; water supply, 176; gas supply, 177; charitable donations in the hands of the city, 177; history of elective franchise in, 182; restraint on taxing power, 183; control of citizens over police, 184; Auxiliary Sanitary Association, 185; Committee of One Hundred, 186; Young Men's Democratic Association, 187.
Newtown, inhabitants of, remove to Connecticut, vii–ix, 12, 13, 20, 21, 25.
New York American, quoted, 309.
Norton, Frederick, 297, 300.
Nova Scotia, condition of, in 1837, 578; given constitutional government, 579. (See Canada.)

O

Ogilvie, James, 218–220; quoted, 206.
Oldham, John, in Massachusetts, vii–ix, 10; first journey of, to Connecticut, 10; evidence as to settlement of, at Wethersfield in 1634, 14–17; land of, how held, 32.
Ontario. (See Canada.)
O'Reilly, Alexander, 163, 164, 165.

P

Palou, *Father*, quoted, 76.
Parkman, F., quoted, 465.
Parr, *Dr.* Samuel, 244, 256, 257, 272, 275, 277, 283, 292; letter of, quoted, 295.
Parton, James, 201.
Pauger, proposes jetties at mouth of Mississippi, 161.
Peachy, A. C., opinion of, on ownership of lands in San Francisco, 127.
Pensions, in Connecticut, vii–ix, 37.
Pequots, attack Indians on the Connecticut, vii–ix, 6.
Perambulation, vii–ix, 98–100.
Percival, J. G., 303.
Philadelphia Gazette, quoted, 308.
Pictet, 233.
Pinder, in Connecticut, vii–ix, 96, 98.
Plymouth, Indians appeal to, to found settlement on the Connecticut, vii–ix, 7; sends commission to Boston, 7; builds fort at Windsor, 8, 9; dispute of, with Dorchester, 18; perambulation in, 100.
Pope, William, 222, 302.

Poydras, Julien, 166.
Praed, W. M., 259, 271.
Pratz, Le Page du, quoted, 161.
Prefects, duties of, in California, 120.
Presidio, character of, 78.
Previous question, in Canada, 571, 572.
Prince Edward Island, absentee landlords in, 578; given responsible government, 579. (See Canada.)
Privy council, appeals to, from Canada, 497, 522, 524.
Pueblo, organization of, 80.

Q

Quakers, excluded from Connecticut, vii–ix, 84, 85, 86.
Quebec. (See Canada.)
Quebec act, 471.

R

Randall, H. S., quoted, 208.
Randolph, John, 197, 226, 254; his relations with Gilmer, 305; his opinion of Gilmer, 317.
Randolph, Thomas M., 222.
Rates, in Connecticut, vii–ix, 114 ff.
Recorder, in Connecticut, vii–ix, 101.
Regidores, in California, 82, 83, 85; in Louisiana, 164.
Rice, *Dr.*, J. H., 199, 211.
Richmond Enquirer, quoted, 307.
Riley, *Gen'l* Bennett, proclamation of, 114.
River towns of Connecticut, C. M. Andrews on, vii–ix.
Rocky Hill, vii–ix, 75, 76.
Rush, Richard, 242, 244, 295.
Ruskin, John, effect of, on Toynbee, 14; his descriptions, 27.

S.

Saltonstall, *Sir* Richard, sends out Stiles party, vii–ix, 19.
Sanchez, Francisco, quoted, 90.
San Francisco, establishment of municipal government in, *Prof.* Moses on, 71–153; discovery of, 75; first settlement at, 76; appearance of, in 1792, 77; government of, before 1834, 87; erected into a pueblo, 88; new ayuntamiento, 90; effect of Constitution of 1836, 91; syndic and alcaldes in, 92, 93, 96, 97, 98, 99; passes to United States, 95; new government in, 101; effect of discovery of gold on, 105; confusion of government of, 106; new government in, 107; general code of laws in, 113; courts in, 113; new government declared illegal and old re-established, 114, 116; improvements recommended by Geary, 117; revenue ordinance, 122; the cause of confusion, 124; trouble over land grants, 126; city charter, 130; its provisions, 132; officers, 136; scheme of council for plundering treasury, 137; public protests, 138; ordinance vetoed, 140; further organization, 141; effect of California's admission as a State, 147; character of city administration, 148; new charter, 149; end of old council, 153.
Say, J. B., 205.
Schools, land granted to, in Connecticut, vii–ix, 40; support of, 115.
Seeley, J. R., quoted, 616.
Seigniorial system, abolished in Canada, 479.
Shore, John, 244.
Sickles, S. V., leaves money to New Orleans, 179.
Simsbury, vii–ix, 75, 76, 79.
Sloat, *Commodore* John D., occupies Monterey, 94.
Smith, Goldwin, quoted, 552.
Smith, *Sir* James Edward, 250, 251.
Smith, John, Gilmer copies MS. relating to, 294.
Smith, *Hon.* Ralph D., quoted, vii–ix, 55.
Smith, Toulmin, quoted, vii–ix, 84, 99.
Southampton, vii–ix, 123.
South Windsor, vii–ix, 75, 76, 77.
Spain, provisions of constitution of 1812 as to local government, 82 ff.
Stewart, Dugald, 283; letter of, quoted, 289.
Stiles, Francis, leads party to Windsor, vii–ix, 19.
Stiles, *Dr.* H. R., quoted, vii–ix, 21, 32, 33, 35, 37, 59, 77, 88, 101, 103, 111, 114.

Stover, C. B., on the Neighborhood Guild in New York, 65–70.
Strong, *Mr. Justice*, quoted, 580.
Strong, *Dr.* Josiah, quoted, 68.
Suffrage, in Connecticut, vii–ix, 30, 82 ff.
Sulpitians, 472.
Superior Council, governs New Orleans, 162.
Surveyors, in Connecticut, vii–ix, 96, 98, 101.
Swift, M. I., 67, 68.
Syndic, in California, 82, 83, 85, 92, 93; in Louisiana, 164, 165.

T.

Talcott, *Miss* Mary K., vii–ix, 5.
Tax-collectors, in Connecticut, vii–ix, 93, 96, 101.
Taylor, John, of Caroline, letter of, quoted, 200.
Taylor, Robert, 209.
Tazewell, L. W., 197, 221.
Teignmouth, *Lord*, 244.
Terrell, Dabney C., 232.
Thorp, W. B., 67.
Ticknor, George, 212, 226, 228, 246; letters of, to Gilmer, 319–329.
Tocqueville, A. de, quoted, 548.
Todd, A., quoted, 496, 497, 499, 507, 538, 598.
Torrey, John, 303, 305.
Touro, Judah, leaves money to New Orleans, 178.
Town, the historic, vii–ix, 30.
Town meetings, in Connecticut, vii–ix, 112, 113.
Townsmen, in Connecticut, vii–ix, 93, 94, 95, 96, 98, 101, 104 ff.; become selectmen, 109.
Toynbee, Arnold, F. C. Montague on, 1–53; early years, 5; enters Balliol College, 11; personal appearance, 11; conversational powers, 12; acquaintance with Ruskin, 14; studies political economy, 15; religious opinions, 15; takes lodgings in Whitechapel, 24; intervals of rest, 26; his common sense, 28; appointed tutor at Balliol, 30; marries, 32; his ideas of economic methods, 33; studies the industrial revolution, 33; his views on competition, 34; forms an economic club, 35; gives popular lectures, 37, 51; his views on co-operation, 41; on church and state, 43; work among the poor, 49; travels, 50; last days, 52; letter of, quoted, 55–57; his ideas of social responsibility, 57.
Toynbee, Joseph, 5.
Toynbee Hall, P. L. Gell on the work of, 57–64. (See also Neighborhood Guild.)
Toynbee Trust, 58.
Tracy, Destutt, 205.
Trent, Wm. P., on English culture in Virginia, 189–329.
Trumbull, *Dr.* B., quoted, vii–ix, 22.
Tucker, George, elected professor in University of Virginia, 306, 307.
Tucker, H. St. George, 227, 228, 241, 311.
Turf and twig, possession by, vii–ix, 41.
Tuttle, *Rev.*, quoted, vii–ix, 21.
Tweddel, John, 271.

U

Ulloa, Antonio de, 163.
Unzaga, 165.
Upshur, Abel P., 222.

V

Vancouver, quoted, 77.
Vaughan, Benjamin, 232.
Virginia, English culture in, W. P. Trent on, 189–329; state of culture in, at beginning of century, 197; financial ruin of, 223; Gilmer on, 256; perambulation in, vii–ix, 100.
Virginia, University of, 248, 264, 265; origin of, 207; located, 208; established, 209; first salaries in, 303; opens, 311. (See Gilmer, Jefferson.)

W.

Walker, Francis, 215.
Walker, John, 254.
Wampum, in Connecticut, vii–ix, 34, 35.

Warham, vii–ix, 92; date of coming of, to Connecticut, 21, 25.
Warner, public, in Connecticut, vii–ix, 96, 99.
Washington College, 199.
Watertown, early exodus from, to Connecticut, vii–ix, 13; connection of Oldham with, 14; later immigration from, 21; size of lots in, 43.
Way-wardens, in Connecticut, vii–ix, 98.
Webster *vs.* Harwington, cited, vii–ix, 121.
Western Company, 160.
West Hartford, vii–ix, 75, 76.
Wethersfield, diagram of early allotments in, vii–ix, 4; earliest settlement at, 13 ff.; lands of, 34, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 56, 57, 60, 61, 63, 64, 65, 66, 67, 73, 74; town offshoots of, 75; officers chosen in, 102. (See also Connecticut, Constables, etc.)
Wickham, 197.
William and Mary College, 199, 211, 248.
Williard *vs.* Killingworth, cited, vii–ix, 121.
Wilson, John, 289.
Wilson, Woodrow, quoted, 547.
Windsor, settlements at, vii–ix, 9, 17 ff; claim of, to priority of settlement, 17; disputes over possession of, 18; lands of, 34, 42, 48, 50, 51, 52, 56, 58, 59, 62, 67, 68; town offshoots of, 75, 76, 77; regulates admission of inhabitants, 87, 88. (See also Connecticut, Constables, etc.)
Windsor Locks, vii–ix, 75–76.
Winslow, Edward, vii–ix, 7, 18.
Winthrop, John, vii–ix, 19, 39, 49, 126; quoted, 15, 22.
Wirt, William, 197, 217, 221, 228, 230, 231, 314; quoted, 216, 220; letter to, 254; offered law professorship, 312.
Wordsworth, *Dr.* Christopher, 251.

Y

Young Men's Democratic Association, in New Orleans, 187.

JA 2
J65
v.7